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APPENDIX TO THE JOURNALS
OF THE
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OF THE
THIRTIETH SESSION
OF THE
LEGISLATURE OF THE STATE OF CALIFORNIA.

VOLUME VIII.



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EIGHTH ANNUAL REPORT

OF THE

BOARD OF TRUSTEES OF THE CALIFORNIA HOME

FOR

The Care and Training of Feeble-Minded Children.

FOR THE YEAR 1892.



SACRAMENTO:

STATE OFFICE, : : : : A. J. JOHNSTON, SUPT. STATE PRINTING.

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Farm Department.

ROBERT P. HILL Manager.

REPORT.

CALIFORNIA HOME FOR THE
CARE AND TRAINING OF FEEBLE-MINDED CHILDREN,
GELSTON-ELDRIDGE, October 15, 1892.

To his Excellency H. H. MARKHAM, Governor:

SIR: Accompanying this, our eighth annual report, will be found the report of Dr. A. E. Osborne, Superintendent, covering in detail the financial transactions of the Institution, together with a summary of other matter of interest necessary to be reported to your Excellency in order to comply with the statutory requirements of the law.

As a matter of fact, the Superintendent's report, when properly made, in a manner curtails the Trustees' report to a mere statement of the general condition of the Institution properly, its hopes, its needs, and such suggestions as the experience of the year last past enables us to make.

REMOVAL.

On November 24, 1891, the children partook of an early breakfast in the old "Home" building at Santa Clara. On the eve of the same day their eyes saw with glad surprise and eager delight their new "Home," near Glen Ellen, in Sonoma County. A year has passed since then; the old has become a fading memory, and the new an ever brightening hope to the children. The transfer from the old to the new was accomplished without accident, friction, or delay, under the joint management and direction of Mrs. Katherine B. Lathrop, President, and Dr. A. E. Osborne, Superintendent.

STATE PROPERTY.

On the day of the arrival of the children at the new Home the State's property at Gelston-Eldridge consisted of about 1,670 acres of hill and valley land, abundantly watered by streams and living springs piped to the buildings of the Home under a gravitative pressure of about eighty pounds to the square inch, affording ample protection against fire.

On the place were about 80 acres of bearing vineyard and orchard, yielding sufficient fruit (green, canned, and dried) for the wants of the Home and a large surplus to market.

BUILDINGS.

The buildings consisted of the kitchen wing of the Main Building; the Epileptic Building (known as the Manse), and the Laundry and Bakery Building—the latter being two stories, the second story finished for dormitory purposes and now occupied by the Training School girls, and as sleeping apartments for female employés. All of the above-mentioned buildings are substantially constructed of brick, iron, and stone. Also, the dwelling that was on the premises at the time of the purchasing of the property by the State, and since then exclusively used by the Trustees when on their monthly or special visits to the Home, being

admirably adapted for that purpose; it has been thought wise to reserve it for the Trustees' sole use and home, whenever visiting the Home for the purposes of holding regular or called meetings of the Board, as well as on their visits of inspection made necessary by the laws of the State. This last mentioned building being quite old and lightly constructed of wood, it has not been thought wise by the Trustees to use it for other purposes.

Since then (the removal from Santa Clara) the boys' wing has been erected, and is now nearly ready for occupancy. Also, a substantial brick Engine and Boiler House (adjacent to the Laundry Building) has been erected and equipped. For the full details as to cost of property and buildings, etc., we refer your Excellency to the Superintendent's report accompanying this, our annual report.

We hardly deem it necessary to remind your Excellency that (in our opinion at least) the State never before in its history effected a more desirable purchase of realty for Institution purposes than on the day it acquired the 1,670 acres of land in Sonoma County for the site of a Home for the Care and Training of the Feeble-Minded Children of the State. We feel quite sure that your Excellency will fully concur in the foregoing remarks, for you saw, sir, on the occasion of your last annual visits to the institutions of the State receiving State aid, its beautiful stretches of valley land, its abundant and never-failing water supply, its accessibility by rail—there being no railroad station in the State of California not in direct communication with the Home.

WATER SUPPLY.

The importance of an ample water supply to a State institution cannot be overestimated, when we remember that one of the State's penal institutions pays for a less daily supply of water than runs to waste on the State's property at Gelston-Eldridge, an amount of money fully equal to what might be considered a fair rate of interest on \$150,000.

The Trustees of the Home, in reviewing their past year's work, are not sensible of having made any very important mistakes or errors; if we have made any (and we think we have made one or two), they were unimportant ones and may be easily rectified, and not apt to be made again.

FARM.

At the time the Home was removed to its present location from Santa Clara, it had a herd of neat cattle, consisting of twenty-four head of mixed stock, and one Holstein bull (kindly donated by Senator Leland Stanford).

The Board of Trustees soon afterward realized that a large quantity of excellent feed (grass) would go to waste for want of stock to consume it; but there being no funds belonging to the Home available for the purchase of more stock, the Trustees used their own private funds, without interest, and purchased one hundred and twenty-seven head of stock cattle, paying therefor \$1,750. Since then, Mr. Robt. P. Hill, Superintendent of the Fruit and Agricultural Department, has sold eighty head off the place for \$1,771, out of which sum the money advanced by the Trustees has all been refunded, leaving a balance of \$21, money profit; five head have been butchered and consumed on the place

(lessening the Institution's expenses to that extent), and twenty-eight head have died, or strayed away, for the want of substantial fences, most of the present fences having been built twenty-five or thirty years ago. The increase in the period covered by this report has been fifty-six head, and the number now in the herd is ninety-five. We think this a good and profitable showing. The profit may be summarized briefly as follows: An absolute gain of seventy-three head of stock, to which add five killed and consumed, and a money profit of \$21 besides.

In addition to the above, the Home starting with an original stock of thirteen head of hogs has increased the same to fifty-six head, and many have in the meantime been butchered for consumption on the place.

The Superintendent of the Fruit and Agricultural Department, Mr. Robert P. Hill, under date of October 12, 1892, in answer to a letter of inquiry, writes as follows: "I have sold, this season, \$927 worth of green fruit, part in the San Francisco market and part for Eastern shipment, also some to the canneries. Besides the fruit sold, it may be stated that at least two hundred pounds daily have been consumed by the children of the Home, from the commencement of the fruit season to the present date. There yet remains the table grapes and quinces to be harvested. If you bring the question of farm expenses up in your report, I would respectfully suggest that you present the fact that at least half of the fruit trees are not yet in bearing, but that they require as much cultivation as full-bearing trees."

In addition to the green fruit sold, Mrs. A. J. Downing, Assistant Matron (who also acts as housekeeper for the Trustees during their short stops at the Home), reports to the President that there have been canned the present season, for future use of the Home, twelve hundred and thirty gallons of various kinds of fruit, two hundred and fourteen gallons of sweet pickles and preserves, as well as six hundred and forty-one glasses of fruit jelly, and fifty-five gallons of catsup.

In addition to the above, there have been dried ten thousand nine hundred and seventy pounds of various kinds of fruit. In accomplishing the above, from ten to fifteen of the children were employed daily, working eight hours on an average, in paring, coring, and spreading fruit on trays.

MILK.

It goes almost without saying that milk is a very important item of food in a children's home. The Home shelters two hundred and fifty children, and in the near future that number will be fully doubled; so both quantity and quality must be considered and provided for with unerring regularity every day in the year. Without going into lengthy particulars, or stating the reasons why, our short experience has convinced us that the most expensive method of obtaining a supply of milk would be to produce it on the place. The next most expensive method to obtain a supply would be to purchase from the neighboring ranches at the prices that they have heretofore uniformly demanded, namely, 30 cents per gallon. After a few weeks' trial of the methods just referred to, Senator Frank DeLong, of Novato, kindly offered to ship us daily by rail, in quantities to suit our needs, pure milk for 12 cents per gallon, and is still supplying us at that rate, freight on the same being 2 cents per gallon additional.

VEGETABLES.

We are also enabled to report that all the kitchen vegetables consumed or required by the Home, either for the use of the inmates or employes, are now and since the early spring have been raised on the place, at the slight cost of the labor of one gardener, secured at a low rate of wages, and the assistance of a detail of from three to six boys. The varieties raised consist of cabbages, tomatoes, pease, onions, beets, squash, beans, celery, carrots, green corn in abundance, etc.

We also take occasion to state that a considerable number of boys have, from time to time, been employed and found very useful working in the orchards and vineyards, and their labor has also been utilized to a considerable extent in grading and graveling walks, and in other light class of labor about the buildings.

WANTS AND NEEDS.

In the matter of future appropriations urgently needed to fully carry out the original conception of founding a Home for the Care and Training of the Feeble-Minded Children of the State, we have concluded, after giving the subject much careful consideration and study, that the following appropriations should be allowed at the next session of the Legislature for the purposes above mentioned.

First—For erecting a girls' wing to the Main Building, the sum of \$119,450. This estimate includes heaters for hot-water heating, radiators, gas fixtures, architect's commissions, and salary of Superintendent of Construction—building complete and ready for occupancy.

Second—Also, an appropriation of \$6,000 for furniture and furnishings for the boys and girls' wings.

Third—There will also be needed, and the need is an urgent one, an appropriation of \$10,000 for the construction of new fences and the repair of old ones.

Fourth—For grading and graveling the walks and approaches to the buildings, an appropriation of \$5,000 is asked for.

Fifth—For maintenance of inmates for the forty-fifth and forty-sixth fiscal years, there will be required an appropriation of \$144,000, being at the rate of \$72,000 for each year. This sum is considerably in excess of the appropriation of two years ago for like purpose, but it should be borne in mind that the Home will be called upon to shelter more than twice the number of its present inmates within the two years that lay before us, than in the two years last past.

This charge is really a fixed one that *must* be provided for. We base our urgent request for this appropriation on an estimate furnished us by Dr. A. E. Osborne, Superintendent.

In conclusion, we have to say that as yet no sale of the site of the old Home at Santa Clara has, up to the present time, been effected.

All of which is respectfully submitted.

KATHERINE B. LATHROP,
President.

GEORGE W. GIBBS,
A. P. OVERTON,
F. W. LOUGEE,
Board of Trustees.

REPORT OF THE SUPERINTENDENT.

SEPTEMBER 15, 1892.

To the Board of Trustees of the California Home for the Care and Training of Feeble-Minded Children:

In accordance with the requirements of the law and of your Board, I have the honor to submit herewith the following as and for my annual report of the operations of this Institution for the fiscal year ending June 30, 1892, together with certain addenda brought down to date, which last are properly noted as they occur.

As will be seen from an examination of the tables, the average population for the year was 181½. The average monthly expenditure for support, salaries, extraordinary expenses, and all other claims of whatever nature, was \$3,104 50, making the per diem cost \$100 15. The per diem cost *per inmate* was 55½ cents, and the per diem cost for the whole population (including all officers on pay, and the cost of boarding and lodging the paid employes of the farm) was 47½ cents. As compared with last year, this is a per diem increase in cost of 4 cents only, notwithstanding the increase in our population and the including in this count of a large amount of extra expense incurred in removing the Institution from Santa Clara.

TABLE No. 1.

The following table is quoted to afford comparisons for previous years:

	1887-1888.	1888-1889.	1889-1890.	1890-1891.	1891-1892.
Average monthly expenses.....	\$2,128 25	\$2,222 16	\$2,531 18	\$2,331 67	\$3,104 50
Average cost per diem.....	69 75	74 07	83 23	63 83	\$100 15
Per diem average inmates.....	87	105½	117	123½	181½
Per diem cost per inmate.....	\$0 80	\$0 68	\$0 70	\$0 51.3	\$0 55.7
Average whole population.....	109	134	147	146.3	216
Average cost per diem per whole population.....	\$0 63	\$0 54½	\$0 56	\$0 43.6	\$0 47.2

TABLE No. 2.

The per diem cost of some of the more prominent items were approximately as follows:

	1890-1891.	1891-1892.
Fuel.....	\$7 28½	\$6 85
Groceries.....	10 70	14 29
Laundry supplies.....	1 64½	97
Light.....	1 21½	2 78
Meats and provisions.....	3 60	4 88
Sewerage, etc.....	82	
Shoes and repairing.....	1 38	1 85
Vegetables and fruit.....	2 33	2 01
Salaries.....	30 81	36 56

TABLE No. 3.

Per Diem Average Cost of Maintenance, etc., for Fiscal Year ending June 30, 1892.

	Total Expendi- tures.	Per Diem Expense.	Per Diem Average of Inmates.	Per Diem Cost per Inmate.	Per Diem Average of Population, Including Staff.	Per Diem Cost— Whole Popula- tion.
1891—July	\$1,883 32	\$60 75	144	\$0 42.2	173	35.1
August	2,967 24	76 36	148	51.5	175	44.4
September	2,185 50	72 85	150	48.5	172	42.3
October	2,340 27	75 49	152	49.6	174	43.3
November	2,394 16	79 80	153	52.1	176	45.2
December	4,121 20	133 92	161	83.1	199	67.2
1892—January	3,732 90	120 41	187	63.8	228	57.2
February	3,818 53	131 67	201	65.5	241	54.6
March	3,219 46	103 86	210	49.4	255	40.8
April	4,141 36	133 92	215	62.1	260	51.5
May	3,382 16	109 10	224	48.7	264	41.3
June	3,662 91	122 09	235	51.9	275	44.3
	\$3,104 50	\$100 15	181½	\$0 55.7	216	47.2

TABLE No. 4.

Discharges and Deaths, with Causes of Death.

Discharges during the year	14
Of this number there were:	
Taken home by parents	6 males and 1 female.
Died	4 males and 3 females.
The causes of death were:	
Consumption	1 male.
Pneumonia	1 female.
Fatty degeneration of heart, associated with epilepsy	1 female.
General exhaustion	1 male and 3 females.

TABLE No. 5.

Movement of Population of Patients.

	Males.	Females.	Total.
Census of July 1, 1891	82	63	145
Admissions July 1, 1891, to June 30, 1892	57	49	106
Totals for year	139	112	251
Discharged	6	1	7
Died	4	3	7
Total to be deducted for year	10	4	14
Census July 1, 1892	129	108	237
Admissions July 1, 1892, to September 22, 1892	8	8	16
Totals	137	116	253
Died July 1, 1892, to September 22, 1892		1	1
Totals	137	115	252
Discharged July 1, 1892, to September 22, 1892	4		4
Present population	133	115	248

TABLE No. 6.

Place of Birth of all Patients Admitted to Home from December 10, 1885, to October 1, 1892.

Place of Birth.	Males.	Females.	Total.
Alabama	2		2
Arkansas	1		1
Australia		1	1
California	127	86	213
Canada	1		1
China (American parents)		2	2
Colorado		2	2
Denmark		1	1
England	2	3	5
Germany		2	2
Hawaiian Islands	1		1
Iowa	2	2	4
Illinois	6	5	11
Italy	2		2
Kansas	1	4	5
Louisiana		2	2
Maine	1		1
Massachusetts	1	2	3
Michigan	1	2	3
Minnesota		2	2
Mississippi		1	1
Missouri	3	4	7
Mexico	1		1
Nebraska	4		4
Nevada	2	5	7
New Foundland	1		1
New York	4	6	10
New Jersey		2	2
Nova Scotia	1		1
Norway		1	1
Ohio	3	4	7
Oregon	2	1	3
Pennsylvania	2	2	4
Rhode Island		1	1
Scotland	1		1
Sweden	1		1
Switzerland		1	1
Tennessee	1		1
Texas		1	1
Unknown		3	3
Virginia	1		1
Washington	1	1	2
Wisconsin	1	1	2
Totals	177	150	327

TABLE No. 7.

Movement and Sex of Population of Patients by Counties, etc., from October 1, 1890, to September 15, 1892.

Counties.	1890-91.						Total October 1, 1891.
	October 1, 1890.	Admitted.	Dis- charged.	Died.	Males.	Females.	
Alameda	14	4	0	0	14	4	18
Butte	1	1	0	0	0	2	2
Calaveras	1	0	0	0	1	0	1
Contra Costa	1	0	0	0	1	0	1
El Dorado	1	0	0	0	0	1	1
Fresno	1	0	0	0	1	0	1
Humboldt	2	1	0	0	2	1	3
Lake	1	0	0	0	1	0	1
Los Angeles	7	0	0	2	3	2	5
Marin	1	0	1	0	0	0	0
Monterey	1	0	0	0	0	1	1
Napa	2	0	0	0	0	2	2
Nevada	2	0	0	0	1	1	2
Placer	1	1	0	0	2	0	2
Sacramento	4	0	0	0	2	2	4
San Bernardino	4	0	0	0	4	0	4
San Benito	2	0	0	0	2	0	2
San Diego	2	0	0	0	1	1	2
San Francisco	53	13	4	0	28	34	62
San Joaquin	1	2	0	0	2	1	3
San Mateo	2	1	0	0	1	2	3
San Luis Obispo	0	1	0	0	1	0	1
Santa Barbara	2	0	0	0	2	0	2
Santa Clara	6	6	0	0	6	6	12
Santa Cruz	1	0	0	1	0	0	1
Sonoma	2	0	0	0	1	1	2
Siskiyou	0	1	0	0	0	1	1
Sutter	1	0	0	0	1	0	1
Solano	0	1	0	0	1	0	1
Tulare	1	0	0	0	0	1	1
Ventura	4	0	0	0	3	1	4
Yolo	3	0	0	0	2	1	3
State at large	1	0	0	0	0	1	1
Hawaiian Islands	1	0	0	0	1	0	1
Totals	126	32	5	3	84	66	150

TABLE No. 7—Continued.

Counties.	1891-92.					Total Sept. 15, 1892.
	Admitted.	Dis- charged.	Died.	Males.	Females.	
Alameda	10	1	0	18	9	27
Butte	1	0	0	0	3	3
Calaveras	1	0	0	2	0	2
Contra Costa	0	0	0	1	0	1
Del Norte	6	0	0	4	2	6
El Dorado	0	0	1	0	0	0
Fresno	1	0	0	2	0	2
Glenn	1	0	0	1	0	1
Humboldt	3	0	0	4	2	6
Lake	0	0	0	1	0	1
Los Angeles	4	0	0	5	4	9
Marin	0	0	0	0	0	0
Monterey	2	0	1	1	1	2
Merced	1	0	0	0	1	1
Napa	2	0	1	0	3	3
Nevada	0	0	0	1	1	2
Placer	2	1	0	3	0	3
Sacramento	5	0	1	5	3	8
San Bernardino	2	0	0	5	1	6
San Benito	1	0	0	2	1	3
San Diego	2	0	0	2	2	4
San Francisco	37	6	1	44	48	92
San Joaquin	2	0	0	2	3	5
San Mateo	2	0	0	2	3	5
San Luis Obispo	1	0	0	1	1	2
Santa Barbara	0	0	0	2	0	2
Santa Clara	9	1	1	11	8	19
Santa Cruz	2	0	0	1	1	2
Sonoma	8	0	0	3	7	10
Siskiyou	1	1	1	0	0	0
Sutter	0	0	0	1	0	1
Solano	1	0	0	1	1	2
Stanislaus	1	0	0	0	1	1
Shasta	2	0	0	2	0	2
Sierra	1	0	0	0	1	1
Tulare	0	0	0	0	1	1
Tehama	1	0	0	0	1	1
Ventura	0	0	0	3	1	4
Yolo	3	0	0	3	3	6
State at large	0	0	0	0	1	1
State of Nevada*	1	0	0	0	1	1
Hawaiian Islands	0	1	0	0	0	0
Totals	116	11	7	133	115	248

* Residence of parents at time of admission. Patient has been for a number of years continuously, up to date of admission, residing in California.

TABLE No. 8.

Causes of Feeble-Mindedness.

So far as we have been able to ascertain from the incomplete histories furnished us, the following are given as causes for feeble-mindedness in the present number of patients in the Institution:

Known or Presumed Cause.	Males.	Females.	Total.
Accidents and diseases of infancy:			
Unknown		4	4
Convulsions	12	4	16
Cholera infantum	1	1	2
Falls		3	3
Measles	3	2	5
Partial drowning		1	1
Scarlet fever	2	1	3
Sickness, severe and prolonged	6	6	12
Congenital	48	38	86
Epilepsy	22	22	44
Epilepsy with paralysis	3	3	6
Epilepsy following meningitis	2	1	3
Epilepsy from fright	1	1	2
Epilepsy following whooping-cough		2	2
Epilepsy from use of tobacco and masturbation	1		1
Panama fever		1	1
Paralysis, general	2	4	6
Paralysis from fall		1	1
Paralysis, infantile	4	1	5
Relating to pregnancy:			
Accident to mother	2		2
Administration of chloroform to mother during dental operation	1		1
Maternal impressions	2		2
Injuries received at birth	2		2
Physical and mental strain of mother	2	1	3
Premature birth (paralysis)		1	1
Shock to mother (grief)	1	2	3
Shock to mother (fright)	2	2	4
Relating to parental conditions:			
Alcoholism of parents	1		1
Feeble-minded father		1	1
Insanity of parents	2	1	3
Kinship of parents	1	1	2
Syphilis of parents	2		2
Relating to brain lesions:			
Inflammation of brain	4	4	8
Hydrocephalus	2		2
Meningitis (from accident)	1	1	2
Stroke		1	1
Infantile debility, nervous system	1	4	5
Totals	133	115	248

The school work pursued during the past year is as follows: Three assemblies a day of one half hour each, viz.: 9 A. M., 11:30 A. M., and 2 P. M. The work at these periods is devoted almost exclusively to the small children, including kindergarten games, motion songs, dancing, simple calisthenics, and marching.

Morning work includes classes in music, articulation, primary and more advanced school work, kindergarten, and etching.

Afternoon work includes kindergarten classes, primary and more advanced work, music, and embroidery.

Two evenings a week are devoted to calisthenic drills, dumb-bells, and wands—first and second grades. The other evenings include miscellaneous work, mainly for those unable to attend during the day because of other work.

Friday evening the school hour is devoted to singing, preparatory for Sunday and the weekly school entertainments. This class includes all the older boys and girls.

TABLE No. 9.

Showing the Number in Each Class.

	Boys.	Girls.	Total.
Alphabet	15	7	22
Articulation	6		6
Pronouncing one syllable	2		2
Short sentences	4		4
Accentuation	5	11	16
Art and decorative work		4	4
Crocheting		22	22
Etching		6	6
Embroidery		3	3
Knitting		4	4
Hemstitching		10	10
Fancy stitching			
Kindergarten: Stick laying, bean laying, peg boards, beads, tablets	27	15	42
Sewing and weaving	25	14	39
Lessons in color and form	23	14	37
Drawing	23	14	37
Penmanship—First lessons	8	2	10
Spencerian copy	23	19	42
Reading—First Reader	9	2	11
Second Reader	1	1	2
Third Reader	4	11	15
Fourth Reader	10		10
Arithmetic—Numbers	17	8	25
Addition to fractions	20	12	32
Fractions	5		5
Decimal currency	5		5
Kindergarten games	20	8	28
Geography	5	12	17
History of the United States	5	12	17
Spelling and definitions	4	11	15
Simple words	10	2	12
Objects	10	5	15
Evening school, miscellaneous work	30	8	38
Classes in music:			
Brass band—1st, 2d, 3d, Bb cornets	3		3
Trombones—Alto, 1st and 2d	2		2
Tenor, 1st and 2d	2		2
Tuba	2		2
Cymbals	1		1
Drummers—Tenor	2		2
Bass	1		1
Brass band, Second Grade—Clarionet	1		1
Cornets	4		4
Alto trombone	1		1
Piccolo	2		2
Clarionet	2		2
Orchestra—Cornet		1	1
Flute		1	1
Violins	1	5	6
Piano		1	1
Clarionet		1	1
Cello		1	1
Double bass	1		1
Vocal music	10	15	25
Calisthenics—Advanced	12	15	27
Second Grade		15	15
Primary	16	9	25

A review of the work of the Home for the past year is mainly the story of the settling down of a large family in new quarters, whose accommodations are, as yet, for the most part, temporary, owing to the incompleteness of our buildings.

That the work of the Institution in its various departments has been so carefully done, under the conditions of disturbance incident to the removal from Santa Clara, and the innumerable inconveniences consequent thereupon, and quite unavoidable; that satisfactory progress in school work has been noted; that the general training and discipline of the patients have not suffered, but have improved; that some manual instruction has been accomplished, and that the general aim and purposes of the Institution have been so well upheld, are all matters of particular interest, and should be to all friends and officers of the Home matters of just pride and congratulation.

To those officers who have remained at their posts of duty throughout the year, bearing their respective burdens bravely and without complaint, and upon whose exertions the success of the present hour has been reared, I shall ever feel intensely grateful and indebted. I trust they have already received the appreciation, and may long remain to share the confidences of the Board.

THE REMOVAL OF THE INSTITUTION.

The first notable event of the year was the lamentable death of Trustee William Harney. This occurred early in September, 1891, by reason of a railroad accident on the Southern Pacific line at Tehachapi Pass, in this State. Almost from the beginning itself he had been identified with the progress of the Home, and had helped to make its history. It is singular that his death should have so suddenly occurred—almost on the very eve of the Institution's removal to the new and permanent site, a matter he had greatly at heart, for which he had talked and worked, and concerning which he had the greatest hopes. But he was destined never to see the Home enter upon that new era of prosperity that this event presaged. His life went out together with the last chapter of the eventful first part of the Institution's history. It would seem as though he had been destined to take no part in the newer life of the Home, which the removal typified. He was as one who had been led to the edge of the promised land to linger for a moment upon its beauties and its possibilities, but destined never to enter therein. Peace to his ashes!

The very important event of the Home's removal occurred November 24, 1891, and it is only truth to say that no such undertaking of a like magnitude ever had a more pleasant course or a more auspicious ending. All things seemed to conspire to the success of the undertaking. It is best described, probably, in the following account, which I wrote at the time for the "Institution Bulletin."

"The removal of the Home from Santa Clara to the present permanent site at Glen Ellen was successfully accomplished on November 24, 1891. As soon as the date was definitely fixed, active preliminary preparations were made, and, although the time was short, the day found us in every way prepared for the great event. A succession of delightfully pleasant days favored us—California's matchless autumn climate was at its best. The long looked forward to and much discussed event was at last at hand. Throughout the Institution ran a thrill of peculiar excite-

ment, a feeling of relief that the long struggle that had engendered so many bitter personalities and unfortunate prejudices was now behind us, and yet withal, a human sense of regret in leaving the old scenes of so many days of pioneer work, and all that that term carries with it.

"A general plan had been adopted, and in every particular it was followed out, so that system and method pleasantly and easily accomplished what many had thought would be a hard and unpleasant task. On the 23d the last remaining household effects that could be spared were shipped by special car, and that night all hands turned in to a late bivouac to gain a much needed rest for the strain of the morrow. In the evening a house meeting was held, at which the final arrangements were perfected, and each officer received individual instructions covering the whole journey, and including the disposal of the children in the new quarters. A special train consisting of one largest sized baggage car, one tourist sleeper, and two day coaches, had been provided for our use by the Southern Pacific Company, and was side-tracked on the afternoon of the 23d, at the Santa Clara station, to facilitate an early morning departure.

"At 4 o'clock the next morning the general rising bell sounded its call, which was responded to with alacrity, as all realized that a few moments delay here and a few there meant serious disarrangement of our plans, and of our comfort in transit. As the children dressed they filed down from the dormitories, each with his or her bed-covers rolled up to deposit them in given places ready for the trucks. The moon shone from a cloudless sky with unusual brilliancy, and the air was balmy, rendering our work at that early hour as pleasant and as easily performed as one could wish. Between 4 and 6 o'clock, beds, bedding, and all remaining movables were gathered together and made up into bundles for loading; breakfast had been partaken of and the breakfast dishes, cups, and other tableware washed and packed, and the children all marched to the front of the buildings, according to orders, to take the 'buses for the train. The asylum children were taken first, then the band, then the training school grades, and all were safely boarded and baggage transferred without a mishap of any kind well in advance of the hour of starting. Division Superintendent W. H. Haydock and Captain Knight, the latter having charge of the train, were on hand to see that every comfort and safety was afforded us. At 8:56 A. M. we were attached to the regular train from San Francisco, and arrived at San José at 9:02. Here our special was side-tracked until 10:15, when we were attached to the 'regular,' due at Oakland pier at 11:50 A. M. From Oakland, however, we were run 'special' through the city to the overland tracks, and thence by special engine, without stops, direct to Suisun City, thence via Napa Junction to Gelston Station—the Institution station on the Southern Pacific Company's line—arriving at the latter place about 3:45 P. M.

"Arriving at Gelston a long line of vehicles awaited us to transfer those who could not walk. The task of unloading was quickly accomplished, and forming lines—the band leading—the procession marched up the new avenue to the enlivening strains of martial music. In front of Madrona Hall the procession halted, and as the band played 'Home Again,' the different detachments were marched to their respective quarters, and in just one hour's time our hungry patients were seated at the supper table, and the removal of the Home—a subject that for so

long had held the attention of a large number of the people of the State, had invaded two Legislatures, and became the all-absorbing topic of one of them; had touched the ermine of the Supreme Court, and had won its just cause, step by step, against innumerable odds—was an accomplished fact.

"Although the ever-thoughtful Matron had provided bountifully for the refreshment of the inner man en route, yet there was appetite for a savory supper, after the exciting events of the day and the strain of so long a journey.

"The ceremonies at the first supper were brief, and yet impressive. After the customary blessing had been said—'Our Father who art in Heaven, make us truly thankful for this food and for all Thy gifts, amen'—the Superintendent addressed them in a few words of thankfulness for the safe journey just completed; for all the comforts of a new and spacious Home that this day marked the possession of; of hope for the future prosperity of the Home, and of appreciation of the services of the officers, and the deportment of the children, whereby the success of the whole occasion had been assured.

"He was followed by the President of the Board of Trustees, who offered the following prayer:

"O most merciful Father! To Thy tender love we owe our safety through this day. In the gratitude of our hearts we thank Thee that the journey of this family has been consummated without accident, and that the season of disappointment, unrest, and anxiety is at an end. Through Thy goodness we now take possession of this lovely Home—a true Home where we pray may ever be a world of strife shut out, a world of love shut in. We thank Thee that so many of us have been permitted to take part on this happy occasion. We wish to consecrate this Home to Thy honor and name. We bless Thy holy name for the preservation of our lives, for the love of our friends, for all the comforts of this life, and for all that which is to come. Guide and direct us in our journey through life. Vouchsafe to protect and defend us and all connected with this Home from the dangers of this night. Bless the Lord! O our souls, and all that is in us bless His holy name, who rescueth our lives from destruction and crowneth us with loving kindness and tender mercy. We beseech Thee, O Lord, to accept this our thank-offering. To Thy name shall be all the honor and glory. Amen!"

LA GRIPPE.

As rapidly as possible following our arrival from Santa Clara applicants were admitted to the available accommodations at our command. In the meantime, the heavy rains of winter set in. The ungraded condition of the grounds about the buildings, and the uncompleted surface drainage, prevented outdoor exercises for the patients between rains, and as a consequence many of our patients suffered from the close confinement that was enforced upon us all. A good many of the new patients came to us with colds, or contracted colds soon after admission. The advent of la grippe, therefore, found our people illy prepared to withstand its ravages, consequently a few days' experience with the epidemic found fully nine tenths of the total population in bed. All the usual (and I should judge, possible) forms were experienced. For a long time from one hundred and thirty to one hundred and fifty were confined to their beds, many of them with quite alarming complications. Officers and children were alike attacked. To say that our hands were very full is to put the question mildly, indeed. A singular immunity from severe attacks was noticed among our epileptics, probably owing to the position of their isolated building, although the only death that occurred was that of a recently admitted epileptic, who suffered a relapse from la grippe and rapidly developed pneumonia, which proved fatal. It is a

matter of gratification that our death rate was limited to this one case, when we consider the facts of the severity of the epidemic, its extent among officers and children, the state of the weather, and the many inconveniences associated with our as yet unsettled quarters. Under all the stress of extra work, of illness, and of personal inconvenience, our officers faithfully remained true to their trusts, and bravely brought us out of the trouble. We will ever recall their devotion and courage with feelings of unstinted praise.

CADET DRILL.

From a series of experiments conducted during the greater part of the year, I am convinced of the desirability (if not absolute necessity) of adopting the cadet system for the more thorough discipline and self-control and management of our boys. For several months we have had a small drill corps, drilling regularly in the school of the soldier and the school of the company, with results that far exceeded our expectations. The exercises and the maneuvers have been so healthful and invigorating, have aroused such a spirit of enthusiasm, secured so much better carriage, and have been conducive to such better morals and individual deportment, that I conscientiously feel the work in this line should be carefully pushed to the extreme limit of our patients' several abilities. The adoption of a uniform for all the boys and young men is a step I have long desired to take, and feel considerable pride in now making. I feel it is indeed a step in the right direction. It is not only cheaper to substantially clothe a large number of persons in uniform, but they can at the same time be clothed immeasurably better, more comfortably, and more satisfactorily to all concerned. They look neater and will behave better. Deny it as much as we may, the dress does go a long way towards making the man, and with feeble-minded people it is one of the most potent factors in determining character. I have never yet seen a single male or female imbecile who was not peculiarly susceptible to the blandishments of bright colors, of nice new clothes, or of pretty surroundings. Even the waifs from the slums, steeped in poverty and ignorant of the crudest of comforts, will respond quickly to the presence of pleasant odors, and if dressed in new clothes with a dash or so of color, will become more tractable so long as the new-born fancy can be gratified. We have numbers of children to whom the greatest possible punishment is to deprive them of their ribbons, their beads, their snowy white aprons, their neckties, or their "best" suits.

The equipment of our boys in a tasty uniform will elevate their morals, stimulate them to a just and proper pride in keeping themselves neat, will help to instruct them to look more carefully after their personal effects, and, coupled with the cadet system of government, will form an educational feature of no mean proportions.

If on no other than the ground of expediency, it would seem that the military features of the cadet system were best adapted to prepare the imbecile mind for further development. No one will deny that where a large number is to be cared for, trained, and taught, *system* is of the first and greatest importance. Military drill not only arouses a boy's deepest interest, but appeals to his manliness, and is the acme of human invention for the correct handling of the human species. Its first lesson, its first principle, *obedience!* is the imperative law of nature, and Heaven's

first demand. Obedience is the foundation of all discipline, the key to knowledge, and the password to every successful phase of life. Teach an imbecile obedience and you illumine the darkest corners of its mind; but it must be taught without force, without fear, without pain, without physical tire or discomfort. It must be taught philosophically, so that the child may come to a self-appreciation of the necessity of obedient response to all demands made upon it without fearing that it is being driven, arbitrarily, to obey.

Froebel understood all this in the teaching of small children of sane minds and normal intelligence, and from it and kindred principles built his kindergarten system, which has now become to be appreciated so highly in all educational work for the immature mind. I know of no means to teach obedience so easily, so quickly, so thoroughly, and yet rationally, and withal, as unconsciously as by military drill. If there were any other means I am sure our armies would have adopted them.

The requisites to good soldiery are a clear head, quickly operating faculties, rapid discernment, good muscular development, and with the muscular sense educated to symmetrical movements, trained to sustain strain, and competent to rapidly execute the various movements demanded. The perfect soldier is a highly perfected human machine, well geared and oiled.

But, it can be argued, the imbecile state is far from this or any part of it; on the other hand, it is the expression of exactly the opposite. This is true, indeed. The imbecile brain is very sluggish in its operations; the mind is dull and clouded; the will weak rather than alert; the disposition indifferent; the muscles poorly developed, and often incompetent of good consecutive coördinate movement; the step is shuffling, the attention wandering, the discernment anything but keen; the ability to comprehend a command impaired. But all these are the things we are, if possible, to correct. These are the conditions that men and women are devoting their energies throughout their lives to counteract. These are the very faults, of all others, that military drill, properly modified to suit each case, is best designed to overcome. We have recently added to our corps of officers the office of Drillmaster, in order to give every facility to the elaboration of this idea. The instruction of the officer will include the following subjects: Gymnasium exercises, posture, carriage, respiration, etc., the settings up of the soldier, wheelings, facings, company and skirmish drill, the manual of arms, and the various drills with dumb-bells, Indian clubs, and wands. I hope to add, also, special muscular drill for weak or paralyzed muscles. With the increased facilities which I hope to procure during the coming year, I anticipate most excellent results from the training outlined above.

OUR EPILEPTIC CONTINGENT.

The status of our epileptic population, separated from the main body of our patients and pleasantly domiciled in a special department ("The Manse") on an adjoining hill, has been greatly improved thereby during the past year. I have watched the care and the progress of these patients with great interest, and I feel that in the bettering of their condition I have learned much regarding the peculiar conditions of this multiform disease, whose chameleon-like nature has for centuries baffled the wisest medical and surgical skill.

The wisdom of providing a separate building for this class is not, however slightly, to be questioned; it admits of no controversy. Henceforth it will remain to be seen to what extent we shall need to provide for these unfortunates. As epilepsy, when unchecked, invariably drifts to some form of insanity or imbecility, and as there are over one hundred and twenty thousand epileptics in the United States,* it is easily foreseen to what an extent the epileptic state will influence this special branch of professional work hereafter. Although known from the earliest times, it has kept singular pace with the strides of civilization, ever developing new phases and increasing the area of its ravages as man has risen higher and higher in the scale of intellectual development. From even a casual review of its causes, one is compelled to the opinion that it must necessarily become more and more common, as time goes on, since it finds in the strains and errors of our present civilization the most fruitful conditions for its origin and transmission.

"A little reflection on the development of the human race will convince the student that to suppose its continuous freedom from aberrant action would be altogether absurd. In truth, how could it be otherwise? Granted an organ of mind, granted its subjection to the laws regulating other viscera of the body, and it follows that its development may be arrested, its functions disordered, its action suspended."†

The care for epileptics becomes, therefore, an all-absorbing question. Whether we would have it so or not, we cannot possibly divorce the subject from the work proper of caring for imbeciles. The disease is so closely linked with the imbecile state that no alternative appears open to our institutions, and it is a hopeful sign of the times to see how most of the State institutions are providing special accommodations for this class. It is not enough that there shall be erected spacious hospitals for the epileptic, as at Gallipolis, Ohio, and as they are about to do in New York State, although this is a great deal. Such institutions will do much good to those who have not yet passed to the stage where asylum care is necessary. I cannot conceive, however, of an institution of any size devoted to the feeble-minded and imbecile without its epileptic quota. It remains, therefore, for us to decide how well we can care for those placed under our charge. Even to those in whom there has been great enfeeblement of the mental powers much can be done, as we have witnessed during the year past in our Manse colony. The following points are therefore worthy of mention:

1. *One-story Buildings.*—A basement for storage and an attic for sleeping quarters for help are valuable, but by all means let the epileptic live on the first floor. At the Manse we have appreciated the fact that there were no stairs to climb up or to fall down. The ready access to the dry mother earth during the long, clear, rainless summer weather, enabling ample working in flower beds, etc., the enjoyment of the fresh air in the open corridors and cosy porches, and the general sense of comfort and security afforded by the construction of the building, are some of the features we have appreciated thoroughly.

2. *Heating by Open Fireplaces.*—Our open fireplaces carefully protected by ample screen guards kept the most perfect ventilation under the severest tests, and gave at the time such a sense of warmth and

*Dr. Fred. Petersen, New York. "Outline for a Plan for an Epileptic Colony."

†Dr. D. Hack Tuke. "Historical Sketch of the Insane."

comfort to the whole building as cannot be described. A source of physical comfort by day, they were at retiring a sweet medicine to restless bodies and aching brains. There is a world of comfort in an open fireplace for the well, and to these patients the influence is fourfold. I recall many stormy winter nights when the rain outside was falling in a steady downpour, or, perhaps, with a cool wind blowing was dashing against the windows, or rattling against the roof, that I have quietly made the tour of the wards to note the sense of absolute peace and comfort that reigned supreme. In the capacious fireplaces the night log had been carefully fixed in place, the dormitory lights turned down to a glowing speck, and the pathetic little faces would be found all turned towards the sputtering log on the hearth. Perhaps they too saw images in the coals. Those to whom bed-time brought a period of tossing and unrest, and those subject to wakefulness, all found in the open fire a never failing attraction. Some would be content to lie with their faces to it, others rested on elbows, now and then one would sit up, all wrapt in mute attention, till eyelids drooped and muscles relaxed, and murmurless they sank to sleep.

3. *Schools for the Epileptic.*—We found it necessary to arrange for a school for the Manse patients, and under its influences all were benefited, and a certain few made the most remarkable progress that I have ever witnessed. In the extension of our Epileptic Department school facilities should be provided even for the feeblest, and apparently the most hopeless. This is very important.

4. *Employment.*—Occupation is one of the best mental tonics known; the more engaging and interesting it is the better its influence and the more lasting its remedial effects. Whenever and wherever possible I have placed them at work outside, and endeavored to not only take but keep off as long as possible their attention from their infirmities. I have endeavored in all cases to stimulate a strong hope for cure through regularity in diet, exercise, sleep, and attention to the tasks assigned them. I think we have more spasms from these workers on Sunday, *the day of rest*, than on any other day of the week. This is significant.

The importance of employment for this class has been recognized by most specialists devoting attention to the work. I find it has been recognized by the State of New York, as in the law establishing the Epileptic Colony, it distinctly states that it shall be "for the medical treatment, care, education, and employment of epileptics."

In writing upon the benefits to follow from the establishment of the New York colony, on the lines laid down, Dr. Petersen (quoted above) says, in August 1892, "Journal of Nervous and Mental Diseases:"

Who knows what benefits some of them may not confer, in return, upon humanity? These new opportunities given them may well bring out in time talents and even genius that otherwise might have fallen into fatuity and decay.

Although it is not given to every epileptic to describe his own sufferings as Dostoevsky does in his novel, "The Idiot," or to delight the world with music as did the epileptic Handel, or with comedy as did Molière, or with poetry as did Petrarch, or with military exploits as did Caesar and Napoleon, or with religion as did Mahommed; still, it is a consolation to those afflicted with this malady to know that epilepsy and genius may coexist, and that the possession of the disease does not necessarily lead to mental or moral degeneration (*under proper conditions of care*). The patient may not reach the highest position among mankind, but under the new dispensation he will not be debarred from any attainment in education, nor prevented from exercising all of his capabilities for his own support and for his own welfare and happiness.

THE SCOPE AND STATUS OF OUR WORK.

Two years ago I deemed it proper to report rather fully upon the confusion of terms in the public mind, and the misunderstandings that existed regarding the scope and status of our work. I regret to say the same confusion and the same misunderstandings exist to-day, often to our inconvenience, and the hardships of those parents and patrons who are made victims of it. I find that physicians themselves have either a confused idea of the distinctions between the various grades we have to care for, or else are careless in the use of terms and ignorant of the means of care provided by the Institution. We find in our correspondence with and in the commitment of cases the words idiot, imbecile, and feeble-minded are used indiscriminately, as though they all meant the same thing. This is a great error, and one that is calculated to lead us into a wrong impression of the applicant's grade.

In my report for 1890, I said:

"The term 'feeble-minded' is used in a generic sense, and is designed to embrace all the grades of 'mental obliquity,' of intellectual weakness, of loss of brain function, of whatever kind and from whatever source, and of general abnormality of the brain and its functions through the various mental processes, associated or not with physical disease, and not otherwise coming under the generic head of insane. It is of wide range, as this discloses, and may include the whole field of mental alienation not assumed by the subject of pronounced insanity. Between its extremes it may embrace every known phase of nervous disease, pathological change, and biological condition. The gradations pass, by almost insensible degree, from the unmistakably feeble-minded to the unmistakably insane, but in practice, as a rule, little difficulty need be experienced in determining the exact status of each case. In this connection, it is proper for us to say that our work is neither supplemental to the care of the insane nor dependent upon it. It stands as independent of it as any special form of education stands independent of custodial care or hospital treatment without educational effort. There appears no reason why the two lines of work should not harmoniously blend, one with the other, in most, if not in all, practical particulars, for they are handmaidens in the same beneficent cause of succoring a distressed humanity. It would scarcely be fair to assert that they are parallel efforts. To express it rather tersely, the work of our asylums for the insane is principally to care for a diseased condition fully established, supervening upon other conditions of more or less pronounced sanity—to deal with an effect.

"The special province of the Home for the Feeble-Minded is to deal with the incipient aberration of the mental processes—*striking at the cause!* It is possible for the care of the feeble-minded to lessen the existence of insanity to an astonishing extent—perhaps one half or more. From the nature of the prime conditions involved, the care of the pronounced insane can never lessen the ranks of the feeble-minded, and is capable of preventing imbecility only to a minimum degree by the occasional removal of the element of parentage. Had the care for the feeble-minded originated and kept pace with the care for the insane in this State, there would have been to-day fewer of the latter class to care for. Another thought occurs to us in this relation. Asylums for the insane have been erected because of *manifestations* foreboding evil to the

senses or the property of society—not to remove a great fundamental cause of disease. Society dreads most what it sees and hears, and nurses the illusion that what is not specially demonstrative is not immediately dangerous. There can be no greater fallacy. If all lunatics were undemonstrative, public apathy would be as indifferent to their isolation and rational treatment as it has been towards the care and education of the purely feeble-minded. As it is, the imbecile boy or girl of fair face and innocent manner, stands fewer chances of State aid than the driveling idiot of misshapen form. Although they may need it more than the latter, the very hideousness of the latter's condition gives him an advantage over the former, and he is more quickly provided for.

"This Institution would remove from society the cause, so far as possible to do so. In this sense, then, we may be pardoned for considering the specialty as in advance of most other forms of correctional charity. Taking this view of it the care for the insane becomes supplemental to our own work—the last refuge for cases of hopeless mental change and weakness culled from the general mass of defectives as unfit or unable for consociate education—the 'Court of last appeal!'"

"But, some will say, all insane are not children, nor are all cases chronic—as might be inferred from the foregoing—what of these? We admit the truth of the assertion, and reply by stating the simple fact that in the vast majority of cases insanity is hereditary from a previously vitiated stock, perhaps unrecognized as an insane condition, but closely allied to it if not identical with it, and comes sooner or later in life to those who are the offspring of feeble-minded parents, or else it is acquired through some of the vices of our civilization, coupled with the wasting errors of life. The seed that is sown by a grandfather may not germinate until a grandchild furnish the proper conditions for its development, and only in his children's children may it bring forth abundant fruit after its own kind. We think it safe to assert that in every case of so called insanity there is a first, or probationary stage of feeble-mindedness—the stage of incubation, so to speak. This stage may be of any duration, from an hour or less to a year or more. That it should not be recognized is no evidence that it does not exist."

The classification that I then suggested as being the most satisfactory, because the clearest and yet most comprehensive, was the following, based upon Dr. M. Kerlin's method:

Idiots: 1. Unteachable—Chiefly characterized by the exhibition of the vegetative functions. 2. Teachable—Vegetative, plus a modicum of mind permitting imitation; limited correlative action of two or more of the five senses; memory.

Idio-imbeciles: A type higher in endowments than "teachable idiots," of mixed characteristics, susceptible of considerable training in simple, uncomplicated lines, and often capable of self-help and light work.

Imbeciles: Usually subdivided into low, middle, and high grades, to denote relative development; susceptible of marked improvement in all educational and manual (industrial) pursuits; made up of many sub-types, the highest of which is the purely feeble-minded; includes in their proper relation certain forms of kleptomaniacs, pyromaniacs, moral imbeciles, etc.

In the above classification the words "unteachable" and "teachable" are used for convenience only, and not for scientific accuracy. There is no such thing as an absolutely unteachable idiot; the lowest possible organism is susceptible to some sort of impression, however slight, and in responding, can be said to be subject to instruction. The value or the extent of the teaching is quite a different matter. To be popularly

understood, however, the words are sufficiently correct for all purposes of approximate classification.

In any case there ought not to be much difficulty in deciding between a diseased brain and a brain that has never developed; between a diseased mind or function of the brain resulting from pathological changes and the weakness resulting solely from an uneducated, immature mind, and a brain arrested early in the process of its evolution. In every instance the question ought to be, Is this a *diseased* condition, following a normal state, or is it a *weak* condition—a wavering, a failing of the vital processes of the brain that have never known a stronger or a normal condition? If it is the former, it is insanity, in some form; if the latter, it is some phase of feeble-mindedness or imbecility. It must be borne in mind that the word *idiocy* has been and is yet used (in Europe, especially) in the same generic sense as we use feeble-mindedness. In speaking of the distinction between insanity and "idiocy," Dr. George Shuttleworth, the eminent Medical Superintendent of the Royal Albert Asylum of England, says:

The lunatic is one who has lost his intellect; the idiot has always lacked it. In the one case there is mental disease; in the other, mental defect. Lunacy, or insanity, is characterized by *disordered* mental action; idiocy, or imbecility, by *defective* mental action.

"A madman is a rich man become poor, whereas the idiot has always been in misery and misfortune." *

I have now to invite your attention to the tables and financial statements hereto attached, hoping you will find therein sufficient elucidation of the financial transactions for the year.

Begging to express my high sense of appreciation of the innumerable courtesies and distinguished considerations received by Mrs. Osborne and myself from the members of this Board, personally and officially,

I remain, your obedient servant,

A. E. OSBORNE.

* Esquirol.

SCHEDULE A.

RECAPITULATION OF RECEIPTS AND EXPENDITURES DURING THE FORTY-THIRD FISCAL YEAR, ENDING JUNE 30, 1892.

Cr.

June 30, 1891—By cash balance in hands of Treasurer	\$153 68
By cash balance in hands of Trustees	3,431 00
June 30, 1892—By coin from State Controller, account of maintenance	42,497 11
By coin from State Controller, account of site and buildings	26,929 76
By coin from State Controller, account of boys' wing	48,600 86½
By coin from State Controller, account of engine house	4,749 00
By coin from State Controller, account of heating boys' wing	139 33½
By coin from State Controller, account of kitchen and dining-room wing	3,150 00
By coin from State Controller, account of gas fixtures	945 00
By cash from parents and guardians, on account of tuition and maintenance	4,057 65
By cash from sale of products at Gelston	1,388 45
By cash from sale of products at Santa Clara	382 35
By cash from interest on special deposit	36 12
By cash from Commercial and Savings Bank, San José, special deposit	5,000 00
By cash from special donations	1,074 43
By cash for amusement fund	5 00

\$142,539 75

Dr.

June 30, 1892—To cash paid local creditors, account of maintenance	\$34,806 11
To cash paid local creditors, account of maintenance, Gelston, 1891	7,691 00
To cash paid local creditors and contractors, account of boys' wing	48,600 86½
To cash paid local creditors and contractors, account of site and buildings	26,929 76
To cash paid local creditors and contractors, account of heating kitchen building	3,150 00
To cash paid local creditors and contractors, account of heating boys' wing	139 33½
To cash paid local creditors and contractors, account of engine house	4,749 00
To cash paid local creditors and contractors, account of gas fixtures	945 00
To cash paid local creditors and contractors from General Fund	9,956 65
To cash advanced by Trustees on account of claims	2,052 52
To cash balance in hands of Treasurer	3,519 51

\$142,539 75

SCHEDULE B.

PAYMENTS MADE FROM THE STATE APPROPRIATION FOR MAINTENANCE DURING THE FORTY-THIRD FISCAL YEAR AT SANTA CLARA, FROM JULY 1, 1891, TO NOVEMBER 25, 1891, AND AT GLEN ELLEN FROM NOVEMBER 25, 1891, TO JUNE 30, 1892.

1891—September 3—Payroll for July, 1891	\$978 17
A. Fatjo, supplies	262 56
I. N. Thompson, milk	135 00
Dr. A. E. Osborne, Superintendent, contingent expenses	76 70
Hancock & Regnart, meats	54 49
G. Cereghino, vegetables	40 00
Mrs. S. M. Stearns, eggs	35 00
Standard Oil Co., gasoline and oil	33 80
H. S. Crocker & Co., letter press and case	32 00
L. Oberdeener, drugs, etc.	26 10
C. Tischer, laundry soap	24 00
W. E. Wadams, veterinary services	20 00
William Fleury, undertaker's services	20 00
W. A. Schrock, bronze for bedsteads	18 90
L. A. Sweatt, repairs	18 00
P. B. Holmes, supplies	16 00
Troy Laundry Machinery Co., laundry supplies	15 65
Keiser & Kock, nursery supplies	13 60

Mary F. Alves, wages	\$13 50
José Roza, fish, etc.	12 65
George Free, truckage and expressage	11 60
Mrs. J. Cheny, wages	9 75
E. H. Guppy & Son, stationery	7 00
Theo. Messinger, cutting hair	5 40
Maurice O'Brien, candies	2 45
Cunningham, Curtiss & Welch, stationery	1 00

\$1,883 32

1891—September 7—Payroll for August, 1891	\$959 01
1891—October 10—Ant. Fatjo, supplies	344 85
J. B. O'Brien, dry goods, etc.	241 87
I. N. Thompson, milk	129 30
J. F. Merkle, cleaning cesspools	100 00
B. Hicks, shoes	80 75
Buckingham & Hecht, shoes	70 30
Hancock & Regnart, meats	50 06
Dr. A. E. Osborne, Superintendent, contingent expenses	47 45
Universal Bakery, bread	45 00
Mrs. S. M. Stearns, eggs, etc.	35 00
Henry Bernhardt & Co., supplies	65 45
Standard Oil Co., gasoline and oil	31 20
G. Cereghino, vegetables	30 60
George Free, freight and truckage	28 85
Rositer, Smith & Stoll, shoe supplies	23 60
Miss M. Pearson, wages	17 00
W. M. McKee, melons	15 00
J. W. Geroni & Co., rubber sheeting	13 50
R. Menzel, repairs and supplies	12 99
Jacob Eberhard, leather	12 03
José Roza, fish	8 78
E. H. Guppy & Son, stationery	5 25

\$2,367 24

1891—October 17—Payroll for September	\$892 25
1891—October 26—Ant. Fatjo, supplies	338 65
Notley Bros., wood	127 50
I. N. Thompson, milk	121 50
Universal Bakery, bread	118 00
Dr. A. E. Osborne, Superintendent, contingent expenses	74 75
R. A. Bourne, shoe supplies	66 95
Hancock & Regnart, meats	64 70
J. B. O'Brien, dry goods and clothing	54 20
Buckingham & Hecht, shoes	48 40
S. Oberdeener, drugs, etc.	45 30
Standard Oil Co., gasoline and oil	31 20
G. Cereghino, vegetables	29 60
S. M. Stearns, eggs	26 25
H. Humburgs, cleaning carpets	23 00
W. W. McKee, melons	23 00
George Free, freight and truckage	19 20
C. Tischer, laundry soap	16 00
Cohn, Nickelsberg & Co., shoe supplies	12 00
San Francisco "Chronicle," advertising	11 25
A. Bolting & Son, supplies	8 20
José Rosa, fish	7 20
T. E. Gallup, dentist	2 00
I. G. Robinson, drugs	6 50
Phil. Heron Co., shoe findings	6 40
Theo. Messinger, hair cutting	6 00
Chas. S. Eaton, music supplies	5 50

\$2,185 50

1891—November 6—Payroll for October	\$864 85
1891—December 11—Ant. Fatjo, supplies	356 88
J. B. O'Brien, dry goods and clothing	145 55
I. N. Thompson, milk	132 00
Universal Bakery, bread	129 00
Southern Pacific Company, freight	94 66
Notley Bros., wood	90 00
Hancock & Regnart, meats	76 38
Dr. A. E. Osborne, Superintendent, contingent expenses	74 54
Henry Bernhardt & Co., bedticks	65 25
S. Oberdeener, drugs, etc.	52 99
E. J. Baker, coal	44 10
Standard Oil Company, gasoline and oil	31 20
W. W. McKee, fruit and poultry	28 00

CALIFORNIA HOME FOR FEEBLE-MINDED CHILDREN.

C. Tischer, laundry soap	\$24 00	
R. Menzell, plumbing and supplies	22 61	
H. Brossius & Son, printing and binding	22 00	
George Free, freight and truckage	20 90	
G. Cereghino, vegetables	19 75	
R. A. Bourne, shoe findings	14 00	
Jacob Eberhard, shoe leather	11 25	
José Roza, fish	6 50	
E. H. Guppy & Son, stationery	4 15	
Troy Laundry Machinery Co., laundry supplies	3 00	
Pacific Manufacturing Co., lumber	3 00	
W. T. Garratt & Co., pump repairs	2 70	
Charles S. Eaton, school supplies	1 21	
1891—December 11—Payroll for November		\$2,340 27
1891—December 28—Ant. Fatjo, supplies	\$896 66	
J. B. O'Brien, dry goods and clothing	297 03	
I. N. Thompson, milk	274 52	
Universal Bakery, bread	108 30	
C. Tischer, laundry soap	94 53	
John A. Day, blacksmith and carriage work	80 20	
S. Oberdeener, drugs	78 25	
A. A. Gosbee, piano repairs	75 20	
Hancock & Regnart, meats	62 40	
George Free, truckage and freight	59 85	
Dr. A. E. Osborne, Superintendent, contingent expenses	53 45	
B. Hicks, shoes	48 50	
Standard Oil Co., gasoline and oil	45 00	
Mary Pachicio, labor	33 80	
J. M. Rainey, livery hire	26 00	
R. Menzell, plumbing and repairs	23 00	
Jacob Eberhard, leather	20 85	
R. A. Bourne, shoe supplies	16 90	
Theo. Messinger, hair cutting, etc.	14 40	
S. F. & N. P. Railway, freight	14 40	
G. Cereghino, vegetables	12 30	
E. H. Guppy & Son, stationery	11 75	
A. S. Withrow, harness repairs	10 45	
W. Beckers, baskets	9 60	
Foley & Nace, printing	9 00	
José Roza, fish	8 00	
Phil. Herold, shoe findings	4 24	
P. A. Klinkner, stencils	3 80	
	1 75	
1892—January 16—Payroll for December, 1891		\$2,394 16
1892—January 27—Foster & Co., supplies	\$1,399 57	
Southern Pacific Co., freight and transportation	462 14	
Geo. P. McNear, supplies	326 93	
Troy Laundry Machinery Co., machinery	260 22	
Standard Oil Co., gasoline and oil	230 23	
Dow Steam Pump Works, pump	213 20	
C. H. Gruenhagen, fire guards, etc.	153 60	
C. W. Englebert, meats	101 70	
Dr. A. E. Osborne, Superintendent, contingent expenses	90 25	
Geo. Alleman, milk	83 00	
G. H. Hotz, clothing	77 40	
E. J. Baker, coal	55 50	
Sonoma Lumber Co., wood	43 26	
John A. Day, engineer supplies	36 00	
Dunham, Carrigan & Hayden Co., supplies	35 00	
Geo. W. Beatty, meats, etc.	33 03	
Notley Bros., wood	31 95	
G. G. Wickson & Co., dairy supplies	31 25	
Rossiter, Smith & Stolle, shoe findings	25 60	
J. B. O'Brien, rubber sheeting	21 15	
Simpson & Roberts, sash and trimmings	16 80	
Nathan, Dohrman & Co., fruit jars	16 80	
Hobbs, Wall & Co., shooks	16 50	
Jos. Chevalier, labor	15 57	
Chas. J. Poppe, supplies	13 00	
Davis Bros., supplies	12 65	
Bacheficio Bache, labor	11 65	
Osborn & Alexander, engineer supplies	9 00	
A. W. Weaver, blacksmithing	6 30	
J. A. Poppe, supplies	4 50	
	2 05	

CALIFORNIA HOME FOR FEEBLE-MINDED CHILDREN.

Huntington-Hopkins Co., laundry supplies	\$1 75	
T. J. Sullivan, blacksmithing	1 65	
Geo. Depones, labor	1 50	
N. W. Griswold, wood	283 50	
		\$4,126 20
1892—February 18—Payroll for January, 1892	\$1,346 85	
South Pacific Coast Ry. Co., transportation from Santa Clara	415 00	
S. Foster & Co., supplies	317 70	
J. B. O'Brien, dry goods and clothing	222 08	
Geo. P. McNear, supplies	219 45	
Simpson & Roberts, lumber	195 51	
Standard Oil Co., gasoline and oil	101 40	
Geo. W. Beatty, meats, etc.	86 73	
S. Oberdeener, drugs, etc.	85 21	
Ant. Fatjo, supplies	72 00	
F. C. DeLong, milk	69 60	
W. & J. Sloane & Co., matting, mats, etc.	62 14	
Dr. A. E. Osborne, Superintendent, contingent expenses	54 70	
S. F. & N. P. Ry. Co., freight	46 70	
R. A. Bourne, shoe supplies	44 00	
John M. Hendley, hauling wood	36 75	
Huntington-Hopkins Co., iron, hardware, etc.	25 35	
Mack & Co., drugs	25 14	
Harry Goodman, hair cutting	24 60	
James Cowan, fuel	23 37	
T. E. Gallup, dentistry	23 00	
Ed Steiger, eggs	22 00	
C. A. Engelbert, meats	20 62	
M. H. Dignan, drugs	19 95	
Henry Bernhard & Co., bedsteads, etc.	18 75	
H. Castagnaccio, vegetables	16 00	
Yeager Dellaporza, labor	12 00	
M. W. McCreary, wages	9 17	
Mrs. M. W. McCreary, wages	9 17	
Peter Pellegrinni, wages	9 00	
George Alleman, milk	8 10	
Olinto Pellegrinni, labor	8 00	
A. Williams, wages	6 66	
Mrs. T. J. Sullivan, blacksmithing	5 75	
C. A. Klenkner & Co., rubber stamps	5 00	
Bacheficio Bache, labor	5 00	
Joe Chevalier, labor	5 00	
Osborn & Alexander, supplies	4 60	
J. A. Poppe, supplies	3 75	
C. A. Wright & Co., stationery	3 30	
San José Furniture Co., supplies	3 00	
W. W. Montague & Co., supplies	2 80	
Olinto Pellegrinni, labor	8 50	
Yeager Dellaporza, labor	8 00	
Peter Pellegrinni, labor	8 00	
Joe Chevalier, labor	5 00	
Bacheficio Bache, labor	4 00	
George Guize, labor	4 50	
		\$3,732 90
1892—March 19—Payroll for February, 1892	\$1,166 33	
1892—March 30—John G. Iis & Co., kitchen utensils	442 55	
S. Foster & Co., supplies	347 69	
Henry Bernhard & Co., beds, bedding, etc.	294 00	
George W. Beatty, meats	143 44	
George P. McNear, supplies	126 75	
A. P. Overton, Trustee, traveling expenses	105 50	
Brown Bros. & Co., clothing	104 00	
Standard Oil Co., gasoline and oil	104 00	
San Francisco and North Pacific Railway Co., freight	100 25	
C. H. Gruenhagen, wire gates, etc.	84 05	
John G. Iis & Co., range and stove	75 00	
F. C. DeLong, milk	69 60	
J. B. O'Brien, dry goods	65 70	
Buckingham & Hecht, shoes	58 85	
A. E. Osborne, Superintendent, contingent expenses	54 90	
Julia M. Judah, Trustee, traveling expenses	46 50	
R. Menzell, taking out gas machine	38 95	
W. & J. Sloane & Co., carpet rugs	33 80	
E. G. Crapskay, labor in laundry	30 33	
Huntington-Hopkins Co., supplies	29 73	

Bancroft & Co., school supplies.....	\$27 05	
H. Castagnaccio, vegetables.....	26 95	
LeCount Bros., school supplies and stationery.....	23 60	
Dolliver Bros., shoe findings, etc.....	22 78	
Langley & Michaels Co., medical supplies.....	18 85	
W. W. Montague & Co., chimney furniture.....	16 90	
Mack & Co., drugs.....	16 10	
Troy Laundry Machinery Co., supplies.....	14 68	
Mrs. A. E. White, wages.....	15 00	
Chas. W. Englebert, meats.....	13 91	
Albert Frost, wages.....	10 00	
Philip Dunn, poultry.....	9 61	
Olinto Pellegrinni, labor.....	9 50	
A. A. Lamont, wall paper.....	9 00	
Bachificio Bache, laborer.....	9 00	
G. G. Wickson & Co., milk cans.....	8 33	
American Oil Co., engineer supplies.....	8 05	
Julius Wagner, eggs.....	7 60	
O'Connor, Moffatt & Co., dry goods.....	6 70	
L. Knight, eggs.....	5 50	
Geo. Free, truckage.....	5 25	
Jos. Dowdall, teaming.....	4 00	
Jos. Francis, labor.....	3 50	
Joe Shevall, labor.....	3 00	
M. H. Dignan, medicine.....	1 75	
1892—April 23—Payroll for March, 1892.....	\$1,154 19	\$3,818 53
George P. McNear, supplies.....	344 52	
S. Foster & Co., supplies.....	232 89	
Henry Bernhard & Co., beds, bedding, etc.....	141 65	
Standard Oil Co., gasoline and oil.....	124 80	
S. F. & N. P. Ry. Co., freight.....	122 43	
George W. Beatty, meats, etc.....	91 74	
Newman & Levison, dry goods and clothing.....	78 35	
F. C. DeLong, milk.....	74 40	
Dr. A. E. Osborne, Superintendent, contingent expenses.....	57 55	
Dunham, Carrigan & Hayden Co., hardware.....	29 35	
Joseph Fredericks & Co., invalid chairs.....	55 00	
A. McElroy, lumber.....	51 96	
American Casualty Co., insurance.....	37 50	
William O'Connor, wages.....	36 00	
Charles J. Poppe, supplies.....	33 77	
W. W. Montague & Co., commode.....	32 30	
Mrs. K. B. Lathrop, medicine case.....	32 00	
Joshua Hendy Machine Co., heater.....	30 50	
W. & J. Sloane & Co., rugs.....	30 00	
J. B. O'Brien, dry goods, etc.....	25 18	
R. A. Bourne, shoe findings.....	22 05	
F. L. Clark, undertaker's services.....	22 00	
Henry Castagnaccio, vegetables.....	21 25	
Julius Wegener, eggs and butter.....	20 46	
Henry Goodman, hair cutting, etc.....	20 25	
Emma W. Peck, wages.....	20 00	
John Sharpe, wages.....	20 00	
Joe Francis, wages.....	19 00	
George Jakel, wages.....	18 75	
Hannie L. Hill, wages.....	18 75	
Troy Laundry Machinery Co., supplies.....	17 15	
R. J. Pye & Co., medicine.....	16 60	
Schussler Bros., mirrors.....	14 35	
J. Alleman, supplies.....	14 60	
Will & Fiuck, flag standard, etc.....	14 25	
Cunningham, Curtiss & Welch, stationery.....	12 82	
Mrs. O. Muntry, wages.....	12 00	
John O. Tucker, prints and plates.....	10 85	
Whittier, Fuller & Co., window glass.....	8 45	
Bachificio Bache, wages.....	8 00	
Peter Pellegrinni, wages.....	8 00	
Olinto Pellegrinni, wages.....	8 00	
P. J. Goby, wages.....	8 00	
Miss Sadie Wilson, wages.....	8 00	
John Foreman, wages.....	7 30	
P. J. Ault, wages.....	6 70	
Sonoma Democrat Publishing Co., printing.....	6 00	
Huntington-Hopkins Co., supplies.....	5 10	

Fannie E. Buckland, wages.....	\$5 00	
Joe Shevall, wages.....	4 00	
Jos. Dunbar, wages.....	3 00	
L. Knight, eggs.....	2 70	\$3,219 46
1892—May 16—Payroll for March, 1892, account of farm.....	\$341 73	
M. Braughler, pruning.....	398 88	
S. V. Cooper, pruning.....	188 32	
Patrick Monahan, cultivating.....	75 00	
Robert Kerr, cultivating.....	50 00	
J. Dowdall, cultivating.....	40 00	
Chris. Monat, labor.....	30 75	
E. G. Reed, cultivating.....	30 00	
R. P. Hill, contingent.....	13 22	
S. Foster & Co., seed potatoes.....	8 19	
Robert Kerr, plowing.....	8 00	
L. Knight, vines.....	7 80	
M. Braughler, grafting.....	6 12	
Harry V. de Heiele, blacksmithing.....	3 00	
Fochette & Turly, blacksmithing.....	14 00	\$1,215 01
Payroll for April, 1892.....	\$1,265 97	
Payroll for April, 1892, farm.....	367 07	
1892—June 2—George P. McNear, supplies.....	339 93	
Standard Oil Co., gasoline and oil.....	267 80	
S. Foster & Co., supplies.....	239 55	
Robert Kerr, cultivating vineyard.....	181 00	
R. J. Dowdall, cultivating orchard.....	152 00	
Patrick Monahan, cultivating orchard.....	150 00	
Geo. W. Beatty, meat and fish.....	110 68	
F. C. DeLong, milk.....	106 80	
J. C. Wilson & Co., coal.....	102 40	
Dunham, Carrigan & Hayden Co., hardware, locks, etc.....	81 29	
E. G. Reed, cultivating orchard.....	70 00	
J. B. O'Brien, dry goods, clothing, etc.....	54 10	
Southern Pacific Railroad Co., freight.....	53 96	
F. Duhring, clothing.....	49 15	
Langley & Michaels Co., drugs, medicines, etc.....	48 70	
Dr. A. E. Osborne, Superintendent, contingent expenses.....	48 10	
J. Wegener, butter, eggs, etc.....	46 92	
S. F. & N. P. Ry. Co., freight.....	35 47	
Geo. P. McNear, grain for feed.....	35 36	
Will & Fiuck, brushes, etc.....	33 10	
Jackson Combetta, labor.....	28 12	
R. A. Bourne, shoe supplies.....	26 81	
Redington & Co., sulphur.....	25 36	
Edward Steiger, eggs, etc.....	23 35	
Antone Lolla, labor.....	19 87	
Nat Parfet, wages as baker.....	19 00	
J. Alleman, eggs.....	18 70	
John A. Roebling Co., wire for fencing.....	16 88	
Henry Castagnaccio, vegetables.....	16 55	
Whittier, Fuller & Co., paints, oils, etc.....	15 60	
Henry Goodman, hair cutting, etc.....	14 40	
Mrs. Ellen M. Steward, butter and eggs.....	8 20	
Chas. J. Poppe, supplies.....	7 75	
Chas. McHarvey, blacksmithing.....	7 75	
Newman & Levison, dry goods.....	7 60	
Miss Lina Swan, wages as companion.....	7 50	
Samuel Shockir, fruit, etc.....	7 25	
Holbrook, Merrill & Stetson, zinc.....	5 90	
Redington & Co., supplies.....	5 75	
Fochetti & Turly, blacksmithing.....	4 50	
Mrs. C. King, wages as companion.....	4 17	
C. A. Wright & Co., stationery.....	3 75	
Geo. W. Watson, agent calostro.....	3 75	
Wakefield Rattan Co., cane, etc.....	3 50	\$4,141 36
1892—June 23—Payroll for May, 1892.....	1,228 87	
Payroll for May, 1892, account farm.....	382 27	
Geo. P. McNear, supplies.....	311 64	
S. Foster & Co., supplies.....	206 58	
J. B. O'Brien, dry goods and clothing.....	187 74	
Geo. W. Beatty, meats, fish, etc.....	178 43	
S. F. & N. P. Ry. Co., freight.....	130 11	

CALIFORNIA HOME FOR FEEBLE-MINDED CHILDREN.

F. C. DeLong, milk	\$111 60
F. Duhring, shoes and clothing	58 25
James Cowan, wood	56 37
R. M. McCann, wood	48 00
Gallup & Worrall, dentistry	43 00
Harry Goodman, shaving and hair cutting	38 85
Troy Laundry Machinery Co., supplies	30 13
F. L. Clark, burial supplies	29 50
Dr. A. E. Osborne, Superintendent, contingent expenses	28 46
Huntington-Hopkins Co., iron and supplies	27 41
H. S. Jackson, labor on farm	27 25
J. Alleman, butter and eggs	25 60
Williams-Marvin Co., shoe supplies	23 95
Felix Reme, wages	20 33
Henry Bernhard & Co., beds, etc.	20 25
Mrs. Ellen M. Stewart, butter and eggs	14 25
Langley & Michaels Co., medicines, etc.	13 63
Eliza D. Potter, wages	11 67
Whittier, Fuller & Co., glass	11 60
Frank Springer, labor on farm	10 83
G. H. Holtz, clothing	9 25
Anna K. Gunther, wages	9 17
J. Wegener, butter and eggs	9 00
Miss Grace A. Murray, wages	8 75
Felix Reme, tools	8 00
Samuel Shockir, fruit	7 50
Miss Minnie Blackman, wages	6 66
J. L. King, supplies	6 29
California Bellows Manufacturing Co., bellows for farm	6 20
C. A. Wright & Co., stationery	5 50
Robert P. Hill, contingent expenses	4 25
Davis Bros., supplies	4 17
Heywood Bros. & Co., chair seats, etc.	4 10
R. J. Dowdall, teaming on farm	4 00
R. J. Pye & Co., drugs, etc.	3 20
A. W. Weaver, horseshoeing	3 00
Mrs. A. M. Moore, cleaning fluid	3 00
M. H. Dignan, supplies	2 00
Chas. J. Poppe, supplies	1 55
	\$3,382 16
	\$34,806 11

SCHEDULE C.

PAYMENTS MADE FROM THE INSTITUTION GENERAL FUND FOR CLAIMS INCURRED ASIDE FROM THOSE COVERED BY STATE APPROPRIATIONS.

1891—September 23—Andrew McElroy, erecting gas house and vault	\$1,150 00
Copeland & Pierce, architects' services	57 50
1891—December 11—Rich & McCann, extra work on engine house	619 15
Rich & McCann, extra work on engine house	122 40
Rich & McCann, extra work on bakery ovens	531 12
Rich & McCann, extra work on doors	9 00
Andrew McElroy, work on gas house, etc.	544 20
Andrew McElroy, extra work on kitchen building	1,035 22
H. Williamson, steam and laundry to kitchen building	1,105 00
Rich & McCann, 21 barrels cement	85 05
Rich & McCann, cement floor laundry building	204 16
Copeland & Pierce, architects' services	51 76
Copeland & Pierce, architects' services Manse building	549 17
Copeland & Pierce, architects' services	56 50
H. Williamson, extra plumbing	1,130 00
1892—January 27—Andrew McElroy, extras, lavatories, bakery, etc.	653 85
Rich & McCann, cement and lime	130 55
1892—March 16—M. Braughler, farm account	100 00
Robt. Kerr, farm account	90 00
Chas. Pifaro, farm labor	35 25
Aug. DeCarli, farm labor	33 37
A. Cammanati, farm labor	30 38
Ed. Steiger, farm labor	35 00
L. Bagnarki, farm labor	24 75
B. Anselma, farm labor	24 75
P. Bache, farm labor	15 17

CALIFORNIA HOME FOR FEEBLE-MINDED CHILDREN.

Redington & Co., farm supplies	\$6 10
G. P. McNear, farm supplies	74 98
Payroll, farm account	234 85
M. Braughler, farm account	200 00
Robt. Kerr, farm account	142 00
Pat. Monahan, farm account	117 00
Geo. P. McNear, farm supplies	43 24
Robt. P. Gibson, farm labor	23 41
Julius Martins, farm labor	20 00
Chas. McHarvey, farm blacksmithing	19 00
A. W. Weaver, blacksmithing	15 40
M. Garabaldi, farm labor	13 12
Geo. Bretenback, farm supplies	9 75
March 26—J. M. Curtis, expert architect on buildings	150 00
April 27—C. F. Connor, brick work on gas house, Manse	40 00
R. J. Dowdall, teaming, gas house, Manse	37 00
Peter Pellegrinni, labor on gas house, Manse	30 50
Olinto Pellegrinni, labor on gas house, Manse	30 00
Yeager Dilaporza, labor on gas house, Manse	27 00
Bacheficio Bache, labor on gas house, Manse	18 00
Joe Francis, labor on gas house, Manse	11 00
May 25—M. J. Stafford, newspaper subscription	6 65
F. W. Spencer & Co., organ for school	80 00
June 2—Peter Pellegrinni, labor on gas house, Manse	41 50
Olinto Pellegrinni, labor on gas house, Manse	38 50
Joe Francis, labor on gas house, Manse	14 00
C. F. Connor, brick work on gas house, Manse	10 00
J. Dowdall, teaming	5 00
Copeland & Pierce, architects' services	13 65
George H. Maxwell, legal services on bequests	61 50

\$9,956 65

SCHEDULE D.

PAYMENT MADE FROM THE STATE APPROPRIATION FOR MAINTENANCE AT GLEN ELLEN DURING THE FORTY-THIRD FISCAL YEAR, FROM JULY 1, 1891, TO NOVEMBER 25, 1891.

1891—September 3—Payroll at Gelston for July, 1891	\$488 34
James Linforth, fruit evaporator	106 90
Edward Steiger, hauling hay	77 50
George P. McNear, feed	31 70
Charles W. Englebert, meats	28 72
Board of Trustees, contingent expenses	27 05
Huntington-Hopkins Co., supplies	20 00
San Francisco "Chronicle," advertising	14 40
Holbrook, Merrill & Stetson, coffee mill	10 55
J. B. Miner, carpentering	9 00
Hobbs, Wall & Co., fruit boxes	8 64
A. Weaver, blacksmithing	3 00
Charles McHarvey, blacksmithing	3 00
Charles J. Poppe, supplies	2 90
Mrs. J. A. Poppe, supplies	2 00
	\$833 70
1891—October 18—Payroll for August, 1891, at Gelston	\$673 08
Robert Kerr, labor with team	62 50
William Skinner, labor with team	64 00
S. Foster & Co., supplies	54 39
George P. McNear & Co., supplies	41 65
Patrick Riley, labor with team	40 00
Keystone Boiler Works, freight	31 40
Charles Englebert, meat	30 66
Mrs. J. A. Poppe, supplies	24 46
L. E. Ricksecker, surveying	22 00
R. A. Swain & Co., fruit jars, etc.	19 75
Board of Trustees, contingent expenses	17 69
Charles McHarvey, blacksmithing	11 00
Ohman Engine Works, freight	5 20
Standard Oil Works, coal oil	5 20
L. J. Sullivan, blacksmithing	3 85
Charles J. Poppe, supplies	3 65
Hawley Bros. Hardware Co., hardware	1 32

\$1,111 85

1891—October 17—Payroll for September, 1891, at Gelston	\$751 70	
Henry Bernhard & Co., iron beds, etc.	268 22	
George P. McNear, flour, feed, etc.	150 21	
Murphy, Grant & Co., blankets	114 00	
J. B. Miner, cleaning windows	66 25	
Robt. Kerr, teaming	39 00	
Edw. Steiger, teaming	39 00	
Pacific Manufacturing Co., clothes racks, etc.	38 25	
R. A. Swain & Co., fruit jars	37 00	
Nathan Dohrman & Co., fruit jars	34 00	
Chas. W. Englebert, meats	32 06	
Board of Trustees, contingent expenses	28 95	
Whittier, Fuller & Co., paints, oils, etc.	29 10	
Chas. McHarvey, blacksmithing	12 55	
Chas. J. Poppe, supplies	7 40	
S. Foster & Co., supplies	2 88	
Hawley Bros. Hardware Co., hardware	1 05	
		\$1,651 62
1891—December—Payroll for October, 1891, at Gelston	\$776 90	
J. Macdonough Co., coal	1,127 75	
Edw. Steiger, teaming	99 00	
Robert Kerr, teaming	97 00	
Hobbs, Wall & Co., fruit boxes	44 72	
Geo. P. McNear & Co., supplies	42 58	
Pat Reilly, hauling coal	42 00	
S. Foster & Co., supplies	36 35	
William Davis, labor	24 00	
Board of Trustees, contingent expenses	22 45	
Truman, Hooker & Co., mill	19 30	
Keystone Iron Works, supplies	15 00	
W. & J. Sloane & Co., matting	14 50	
Huntington-Hopkins Co., supplies	13 65	
P. Le Gonail, labor	12 00	
Mrs. Trudgeon, labor	12 00	
W. McP. Hill, labor	10 75	
Standard Oil Co., oil	10 40	
San Francisco and North Pacific Railway Co., freight	8 25	
Chas. McHarvey, blacksmithing	7 75	
A. W. Weaver, blacksmithing	6 75	
J. V. Miner, labor	4 50	
Henry J. De Hude, blacksmithing	2 50	
		\$2,450 10
1891—December 28—Payroll for November, 1892, at Gelston	\$708 12	
John G. Iis & Co., kitchen utensils	270 00	
John M. Hendley, hauling wood	121 00	
George P. McNear, supplies	105 83	
W. & J. Sloane & Co., carpets	99 66	
Davis Bros., supplies	60 45	
Charles W. Englebert, meats	54 84	
Edw. Steiger, teaming	46 00	
S. Foster & Co., supplies	43 20	
Board of Trustees, contingent expenses	40 68	
Robert Kerr, teaming	40 00	
Hobbs, Wall & Co., shooks	27 00	
Charles J. Poppe, supplies	7 95	
O'Connor, Moffatt & Co., oil cloth, etc.	6 00	
S. J. Sullivan, blacksmithing	5 00	
P. Reilly, teaming	4 00	
R. A. Swain & Co., lamp globes	4 00	
		\$1,643 73
		\$7,691 00

SCHEDULE E.

PAYMENTS MADE FROM THE STATE APPROPRIATION FOR MAINTENANCE DURING THE FORTY-THIRD FISCAL YEAR.

Said indebtedness having been incurred during the forty-second fiscal year, and was paid from the balance of appropriation for said year.

1891—October 9—F. S. Chadbourne & Co., tables, chairs, etc.	\$696 00	
Pacific Spring Mattress Co., beds, etc.	127 50	
O'Connor, Moffatt & Co., table and bed linen, etc.	382 90	
Holbrook, Merrill & Stetson, refrigerator	116 40	
F. S. Chadbourne & Co., freight, etc.	17 60	
		\$1,340 40
1891—October 26—T. E. Gallup, professional services		5 00
		\$1,345 00

SCHEDULE F.

PAYMENTS MADE FROM THE STATE APPROPRIATION FOR A PERMANENT SITE, AND TO ERECT BUILDINGS THEREON, DURING THE FORTY-THIRD FISCAL YEAR.

1891—September 3—Andrew McElroy, account contract Epileptic Building	\$1,804 58	
Andrew McElroy, account contract Laundry Building	4,499 81	
		\$6,304 39
1891—October 10—Andrew McElroy, account contract Laundry Building	\$3,963 46	
H. Williamson, account contract plumbing Laundry Building	134 92	
Copeland & Pierce, account services as architects	2,049 00	
Andrew McElroy, account contract Epileptic Building	2,031 70	
Andrew McElroy, balance contract Laundry and Kitchen Buildings	7,203 61	
H. Williamson, balance contract Laundry and Kitchen Buildings	583 70	
		15,966 39
1891—October 26—Andrew McElroy, account contract Epileptic Building	\$1,420 77	
H. Williamson, account contract Epileptic Building	204 07	
Andrew McElroy, balance contract Epileptic Building	2,664 86	
H. Williamson, balance contract Epileptic Building	169 28	
		4,458 98
1891—December 11—Copeland & Pierce, services as architects		200 00
		\$26,929 76

SCHEDULE G.

PAYMENTS MADE FROM THE STATE APPROPRIATION FOR THE ERECTION OF THE BOYS' WING, DURING THE FORTY-THIRD FISCAL YEAR.

1891—September 8—Copeland & Pierce, services as architects, etc.	\$2,341 42	
San Francisco Sewer Pipe Co., pipe	316 98	
Sacramento Publishing Co., advertising	38 00	
"The Examiner," advertising	28 00	
		\$2,724 40
1891—October 10—San Francisco Sewer Pipe Co., pipe	\$517 02	
M. F. Redmond, supervising work	182 00	
Copeland & Pierce, services as architect	152 37	
Sonoma "Democrat" Publishing Co., advertising	25 00	
		876 39
Richard McCann, on contract mason work		5,485 59
1891—November 6—Richard McCann, on contract mason work		7,668 43
Copeland & Pierce, services as architects	\$213 00	
M. F. Redmond, supervising work	182 00	
Huntington-Hopkins Co., pipe, fittings, etc.	156 13	
Sacramento Publishing Co., advertising	32 00	
		583 13

1891—December 11—R. J. Dowdall, excavating	\$1,134 00	
M. F. Redmond, supervising work	189 00	
Copeland & Pierce, services as architects	183 22	
San Francisco Sewer Pipe Co., pipe	50 02	
Richard McCann, on contract mason work	\$1,556 24	
1892—January 9—Richard McCann, on contract mason work	6,595 99	
W. M. Fletcher, on contract carpenter work	4,154 04	
R. J. Dowdall, excavating	1,814 88	
M. F. Redmond, supervising work	\$810 00	
Copeland & Pierce, services as architects	175 00	
	165 80	
1892—January 27—Copeland & Pierce, services as architects	\$182 05	1,150 80
M. F. Redmond, supervising work	182 00	
Richard McCann, on contract mason work		364 05
1892—February 18—Richard McCann, on contract mason work		6,554 21
W. M. Fletcher, on contract carpenter work		3,788 42
M. F. Redmond, supervising work	\$182 00	1,840 57
Copeland & Pierce, services as architects	156 31	
San Francisco Sewer Pipe Co., pipe	63 60	
Olinto Pellegrinni	13 50	
Yeager Dilaporza	11 50	
Peter Pellegrinni	9 50	
Bacheficio Bache	9 00	
Joe Chevrier		450 47
1892—March 30—M. F. Redmond, supervising work	\$5 00	
Bacheficio Bache, labor on pipe	175 00	
Peter Pellegrinni, labor on pipe	14 50	
Joe Francis, labor on pipe	14 00	
Joe Shevall, labor on pipe	13 00	
Olinto Pellegrinni, labor on pipe	8 00	
	6 50	
1892—April 21—W. M. Fletcher, on contract for carpenter work		231 00
M. F. Redmond, supervising work	\$189 00	1,964 20
Copeland & Pierce, architects' services	54 56	
Olinto Pellegrinni, labor on pipe	4 00	
Peter Pellegrinni, labor on pipe	4 00	
Joe Shevall, labor on pipe	2 50	
Bacheficio Bache, labor on pipe	2 00	
Joe Francis, labor on pipe	1 50	
1892—May 23—M. F. Redmond, supervising work	\$182 00	257 56
Joe Shevall, labor on pipe	8 50	
1892—June 15—M. F. Redmond, supervising work		190 50
1892—July 21—M. F. Redmond, supervising work		118 00
		\$48,600 86

SCHEDULE H.

RECEIPTS FROM OTHER SOURCES THAN STATE APPROPRIATIONS DURING THE FORTY-THIRD FISCAL YEAR.

<i>Sales from Farm at Glen Ellen.</i>		
1891—Sept. 7—Fruit, stock, and hay	\$23 00	
Oct. 28—Fruit	6 55	
Nov. 5—Fruit	26 50	
Nov. 9—Fruit	13 60	
Nov. 20—Fruit	7 20	
Dec. 4—Fruit	931 40	
Dec. 11—Fruit	46 35	
Dec. 11—Fruit	34 20	
1892—Jan. 6—Fruit	15 00	
Mar. 3—Farm products	177 65	
May 5—Farm products	7 00	
June 2—Farm products	100 00	
		\$1,388 45

Sales from Farm at Santa Clara.

1891—Oct. 28—Hay, pork, etc.	\$240 55	
July 31—Junk, etc.	3 80	
1892—June 30—Fruit	75 00	
June 30—Stock, hay, etc.	63 00	
		\$382 35

Amusement Fund.

1892—July 21—Cash from Mrs. Webster	\$5 00	5 00
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Interest Account.

1892—May 1—Cash, Commercial and Savings Bank, San José	\$36 12	36 12
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Special Donation Account.

1891—Aug. 31—By cash per Ed. L. Sheppard	\$200 00	
Dec. 4—By cash per S. N. Hundley	120 00	
Dec. 31—By cash per J. McDonald & Co.	11 90	
1892—Mar. 1—By cash per guardian of Walter Dorr	656 53	
Mar. 30—By cash per W. R. J.	25 00	
May 17—By cash per Mrs. J. J. Marks	30 00	
June 2—By cash per Mrs. J. J. Marks	31 00	
		1,074 43

Income Account, Maintenance.

From parents and guardians (as per statement)	\$4,057 65	4,057 65
		\$8,944 00

SCHEDULE I.

RECEIPTS FROM THE STATE CONTROLLER ON ACCOUNT OF THE APPROPRIATIONS FOR THE FORTY-THIRD FISCAL YEAR.

Account of Maintenance.

1891—Sept. 2—Received coin from State Controller	\$2,717 02
Oct. 9—Received coin from State Controller	3,479 09
Oct. 17—Received coin from State Controller	1,643 95
Oct. 26—Received coin from State Controller	2,193 17
Dec. 5—Received coin from State Controller	4,790 37
Dec. 17—Received coin from State Controller	1,604 78
Dec. 21—Received coin from State Controller	2,433 11
1892—Jan. 15—Received coin from State Controller	1,399 57
Jan. 25—Received coin from State Controller	2,726 63
Feb. 17—Received coin from State Controller	3,732 90
Mar. 12—Received coin from State Controller	1,166 33
Mar. 26—Received coin from State Controller	2,652 20
April 20—Received coin from State Controller	3,219 46
May 14—Received coin from State Controller	2,848 05
May 31—Received coin from State Controller	2,508 32
June 11—Received coin from State Controller	1,611 14
June 2—Received coin from State Controller	1,771 02
	\$42,497 11

SCHEDULE J.

ON ACCOUNT OF SITE AND BUILDINGS.

1891—Sept. 3—Received coin from State Controller	\$6,304 39
Oct. 9—Received coin from State Controller	15,966 39
Oct. 26—Received coin from State Controller	4,458 98
Dec. 5—Received coin from State Controller	200 00
	\$26,929 76

SCHEDULE K.

RECEIPTS FROM STATE CONTROLLER ON ACCOUNT OF THE APPROPRIATION FOR FORTY-SECOND FISCAL YEAR, BUT PAID DURING FORTY-THIRD FISCAL YEAR.

1891—Oct. 9—Received coin from State Controller	\$1,340 40
Oct. 26—Received coin from State Controller	5 00
	<hr/> \$1,345 40

SCHEDULE L.

ON ACCOUNT OF ERECTING BOYS' WING.

1891—Sept. 7—Received coin from State Controller	\$2,724 40
Oct. 9—Received coin from State Controller	6,361 98
Nov. 5—Received coin from State Controller	8,251 56
Dec. 5—Received coin from State Controller	8,152 23
1892—Jan. 2—Received coin from State Controller	7,119 72
Jan. 25—Received coin from State Controller	6,918 26
Feb. 17—Received coin from State Controller	6,079 45
Mar. 26—Received coin from State Controller	231 00
Apr. 20—Received coin from State Controller	2,221 76
May 19—Received coin from State Controller	190 50
June 11—Received coin from State Controller	182 00
July 21—Received coin from State Controller	168 00
	<hr/> \$48,600 86

SCHEDULE M.

ON ACCOUNT OF THE HEATERS AND RADIATORS FOR THE HOT-WATER HEATING OF THE "BOYS' WING" BUILDING.

1891—Sept. 7—Received coin from State Controller	\$139 33
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SCHEDULE N.

ON ACCOUNT OF ERECTION OF ENGINE HOUSE.

1891—Sept. 7—Received coin from State Controller	\$309 00
Oct. 9—Received coin from State Controller	2,189 13
Nov. 5—Received coin from State Controller	1,876 01
Dec. 5—Received coin from State Controller	374 86
	<hr/> \$4,749 00

SCHEDULE O.

ON ACCOUNT OF THE HEATERS AND RADIATORS FOR THE HOT WATER HEATING OF THE KITCHEN AND DINING-ROOM WING.

1891—Sept. 8—Received coin from State Controller	\$98 25
Dec. 5—Received coin from State Controller	41 65
1892—Jan. 7—Received coin from State Controller	3,010 10
	<hr/> \$3,150 00

SCHEDULE P.

ON ACCOUNT OF GAS FIXTURES FOR THE KITCHEN AND DINING-ROOM BUILDING, LAUNDRY AND BAKERY BUILDING, AND EPILEPTIC BUILDING.

1891—Dec. 5—Received coin from State Controller	\$900 00
Dec. 21—Received coin from State Controller	45 00
	<hr/> \$945 00

SCHEDULE Q.

PAYMENT MADE FROM THE STATE APPROPRIATION FOR THE HEATERS AND RADIATORS FOR THE HOT-WATER HEATING OF THE BOYS' WING, DURING THE FORTY-THIRD FISCAL YEAR.

1891—Sept. 8—Copeland & Pierce, architects' services	\$139 33
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SCHEDULE R.

PAYMENTS MADE FROM THE STATE APPROPRIATION FOR THE HEATERS AND RADIATORS FOR THE HOT-WATER HEATING OF THE KITCHEN AND DINING-ROOM BUILDING, DURING THE FORTY-THIRD FISCAL YEAR.

1891—Sept. 8—Copeland & Pierce, architects' services	\$73 75
"The Examiner," advertising	24 50
	<hr/> \$98 25
Dec. 11—H. Williamson, extra plumbing	41 65
1892—Jan. 9—H. Williamson, contract	\$2,950 00
Copeland & Pierce, architects' services	60 10
	<hr/> 3,010 10
	<hr/> \$3,150 00

SCHEDULE S.

PAYMENTS MADE FROM THE STATE APPROPRIATION FOR THE ERECTION OF AN ENGINE HOUSE, DURING THE FORTY-THIRD FISCAL YEAR.

1891—September 8—M. F. Redmond, supervising work	\$189 00
Copeland & Pierce, architects' services	120 00
	<hr/> \$309 00
1891—October 10—Rich. McCann, account of contract	\$1,881 57
W. M. Fletcher, account of contract	248 40
Copeland & Pierce, architects' services	59 16
	<hr/> 2,189 13
1891—November 6—Rich. McCann, account of contract	\$988 09
Rich. McCann, account of contract	518 40
C. M. Burnback, account of contract	118 57
W. M. Fletcher, account of contract	200 25
Copeland & Pierce, architects' service	50 70
	<hr/> 1,876 01
1891—December 11—Rich. McCann, account of contract	\$219 60
H. Williamson, account of contract	125 79
W. M. Fletcher, account of contract	19 35
Copeland & Pierce, architects' services	10 12
	<hr/> 374 86
	<hr/> \$4,749 00

SCHEDULE T.

PAYMENTS MADE FROM THE STATE APPROPRIATION TO BE EXPENDED FOR THE GAS FIXTURES FOR THE KITCHEN AND DINING-ROOM BUILDING, LAUNDRY, AND BAKERY BUILDING, AND THE EPILEPTIC BUILDING, DURING THE FORTY-THIRD FISCAL YEAR.

1891—Dec. 11—A. F. Nye & Co., contract	\$900 00
Dec. 28—A. F. Nye & Co., contract	45 00
	<hr/> \$945 00

SCHEDULE U.

CLASSIFIED EXPENDITURES DURING THE FORTY-THIRD FISCAL YEAR, ON ACCOUNT OF
MAINTENANCE, AT SANTA CLARA AND GLEN ELLEN.

Buildings—alterations, additions, and repairs.....	\$523 86	
Clothing.....	948 75	
Dry goods.....	495 47	
Expenses—general.....	824 38	
Expressage and freight.....	424 14	
Expenses—traveling.....	337 40	
Feed—stock.....	117 98	
Furniture.....	1,937 91	
Fuel.....	1,188 00	
Farm account.....	2,973 92	
Groceries.....	5,217 90	
Grounds.....	118 50	
Hardware.....	134 13	
Laundry.....	287 16	
Light.....	1,014 90	
Meats and provisions.....	1,784 36	
Medicines.....	529 67	
Postage stamps, box rent, etc.....	113 47	
Removal of children and effects from Santa Clara.....	1,036 50	
Shoes.....	340 85	
Shoe shop.....	336 49	
Sewerage.....	100 00	
Stationery, school supplies, etc.....	177 75	
Steam-power, heating, etc.....	708 88	
Salaries.....	12,346 30	
Telegraphing.....	50 61	
Vegetables and fruit.....	736 83	
		\$34,806 11
<i>At Gelston.</i>		
Fruit department.....	\$1,100 11	
Agricultural department.....	771 54	
Household department.....	1,360 70	
General expenses.....	458 92	
Grounds.....	1,433 23	
Furniture.....	847 38	
Steam-power, heating, etc.....	1,290 75	
Laundry.....	66 90	
Buildings, etc.....	361 47	
		7,691 00
		\$42,497 11

REPORT OF THE COMMITTEE ON FINANCE AND AUDITING
OF ACCOUNTS.

STATEMENT OF ACCOUNTS FOR THE FISCAL YEAR ENDING JUNE 30, 1892.

*To the President and Board of Trustees of the California Home for the
Care and Training of Feeble-Minded Children:*

We, the undersigned Committee on Finance and Auditing of Accounts, agreeable to and in compliance with the requirements governing the duties devolving upon us, respectfully report that we have carefully and thoroughly audited the foregoing accounts, and have examined the books and financial transactions of the Superintendent and Secretary of this Board, and found all the same correct in each and every particular. Vouchers are on file covering the same and the accounts are correctly kept.

Respectfully submitted.

A. P. OVERTON,
F. W. LOUGEE,
GEO. W. GIBBS,
Committee.

IN THE MATTER OF

THE INVESTIGATION OF THE CONSTRUCTION OF SOME OF
THE BUILDINGS OF THE HOME FOR THE FEEBLE-
MINDED, AT GLEN ELLEN,

BEFORE A

Select Joint Committee consisting of Senators Everett, Biggy, and
Seymour, and Assemblymen Curtis, Taggart, and Bennett.

IN THE MATTER OF THE INVESTIGATION OF THE CONSTRUCTION OF SOME OF THE BUILDINGS OF THE HOME FOR THE FEEBLE-MINDED, AT GLEN ELLEN.

SACRAMENTO, January 18, 1893.

Hon. H. H. MARKHAM, Governor of California:

DEAR SIR: On the tenth day of December, 1892, one Victor Hoffmann, Jr., of San Francisco, filed an affidavit with the State Controller, a copy of which is hereto attached. About the same time there was handed to the Attorney-General an anonymous statement unsigned. Said statement and affidavit claimed that fraud had been committed in the construction of the buildings of the Glen Ellen Home for Feeble-Minded Children, in Sonoma County, California. After consultation with the Attorney-General, the undersigned deemed that an investigation should be made to determine the truth of the statements made, and after inquiry the undersigned decided that Mr. E. J. Croly, of Sacramento, an expert builder, could be relied upon to make a thorough investigation of the matter. We accordingly requested him to proceed to Glen Ellen and make an investigation, which he did, and has now handed in his report, sworn to before W. H. Govan, Deputy Clerk of the Supreme Court, and we attach to this communication the original thereof.

We understand the Legislature is about to appoint a Committee of Investigation, and we deem it proper to forward to you this communication, together with the report, so that you can turn the same over to the committee with such instructions as you may deem proper in connection therewith.

No other communication, anonymous or otherwise, has been filed with the State Controller or Attorney-General.

E. P. COLGAN,
State Controller.
WM. H. H. HART,
Attorney-General.

To the Hon. E. P. COLGAN, State Controller, and Hon. WM. H. H. HART, Attorney-General of the State of California:

GENTLEMEN: In compliance with your request, I visited the "Glen Ellen Home for Feeble-Minded Children," in Sonoma County, California, and made examination of said buildings in regard to alleged imperfect materials and faulty construction, as is set forth in a series of charges by Mr. Victor Hoffmann, Jr. A copy of said charges was furnished, numbered from one to twenty-five, inclusive.

I herewith submit the following report:

First—(Charge:) No planking used for boxing; concrete all thrown in against dirt only.

(Reply:) Good evidence is given that plank boxes have been used for all concrete walls above grade.

Second—It calls for all exposed concrete work above ground to be most smoothly finished off with Portland cement, to form a finished base, as per details.

(Charge:) *Not finished as called for; all surface of concrete still exposed.*

(Reply:) A portion of the above-named wall is finished as described and a portion not finished. The lack of such finishing does not lessen the strength or durability of the work.

Third—All arches to be laid up in mortar, composed of one part Portland cement to three parts sand.

(Charge:) *No cement used in the above.*

Fourth—All brick work below the second story joints to be laid up in mortar composed of one barrel of Portland cement to two barrels of lime.

(Charge:) *Only about one dozen barrels used in the above.*

Fifth—Balance of work to be laid up in mortar composed of one barrel of Portland cement to three barrels of lime.

(Charge:) *Altogether in the entire brick work of 1,300,000 bricks, only eighteen or twenty barrels of cement were used.*

(Answer:) In specifications 3, 4, and 5, I am unable to determine the amount of cement used. That is a question that will have to be determined by testimony.

Sixth—(Charge:) No granite bearing or pier blocks in the building, as called for. *All basalt stone.* No granite door sills opening out on balcony as called for. *No kind of stone.*

(Answer:) There are granite pier blocks and granite door sills where called for, and of the size mentioned in the specifications.

Seventh—(Charge:) *The iron stairs are not built as called for.*

(Answer:) The above-mentioned iron stairs are not constructed the same as is called for in specifications. The stairs are equally well constructed for strength and durability. The record shows that where specifications were deviated from the change was mutually agreed upon by the Board of Trustees, the architects, and the contractor.

Eighth—(Charge:) The frame trusses call for upset ends of rods, and rods and sizes as shown, $2\frac{1}{2}$ " in diameter. *They are not upset, and the diameter of the rods is only 1". "Span 60'."*

(Answer:) The above statement is misleading, inasmuch as it implies all the rods in said trusses were to be $2\frac{1}{2}$ " in diameter. The plans show center rod $2\frac{1}{2}$ " in diameter, two rods $1\frac{9}{16}$ " in diameter, and the remainder of rods in truss, $1\frac{1}{4}$ " in diameter. They are all 1" in diameter as set forth in said charges.

Ninth—Each tier of joints and ceiling beams, and tops of walls, and also continuous on the lines around walls parallel with wall beams, and also an additional extra course around the Assembly Hall, to have $\frac{1}{4}$ " by 4" wall plates to serve as bond iron.

(Charge:) *Only one course in building.*

(Answer:) The above-mentioned bond irons are all in buildings as called for, and may be seen and found by any person that knows what a bond iron is.

Tenth—All outside and inside openings in brick walls to have $\frac{1}{2}$ " by $2\frac{1}{2}$ " arch bars; two to all walls 17" and under, and three to all walls over 17" thick.

(Charge:) *Only one arch bar in any opening in all the buildings, and those above first floor of laundry and bakery; and also all those in the kitchen and dining-room wings are only $\frac{1}{4}$ " by 2" thick.*

(Answer:) I did find two openings in laundry building of 17" walls were but one arch bar was put in. In the boys' wing, where examination could be made without defacing plaster, arch bars were in place, the number and size required by the specifications in the respective openings.

Eleventh—No Oregon pine in the building, except the timber for Assembly roof trusses.

(Charge:) *All of Guerneville bull pine, and flooring of slashed-grained stuff.*

(Answer:) There is some Guerneville pine used in the building, but all of a good, merchantable quality. The flooring in the kitchen and dining-room building is what is known as the "Mendocino pine flooring," and of a good quality. The records show that the change was decided upon by parties named in the answer to specification 7. There are a few boards of the "slashed" (cut), that inadvertently have been laid in the center of rooms.

Twelfth—It calls for 2" by 8" ceiling beams in Assembly Hall ceiling, but there are only 2" by 6", and rotten at that.

(Answer:) The ceiling joints in are 2" by 6", of good quality, and I was unable to discover any rotten joints.

Thirteenth—All slopes of roofs, porches, dormers, ventilators, slated gables, bays, etc., to be covered with second quality of 1" by 6" pine flooring.

(Charge:) *Not one foot used; all 1" by 6" common surfaced on one side, used. All of Guerneville pine; no T. and G.; full of knots and resin.*

(Answer:) I find the roof of the laundry and bakery building covered with 1" by 6" T. and G., as specifications call for. The remainder of roofs are covered with 1" by 6" common surfaced pine boards. I was unable to ascertain the cause for the change. I deem the common surfaced as durable as the T. and G., and makes a stronger job, for the reason that there is more nailing in the common surfaced than in the T. and G.

Fourteenth—Finished floors are to be laid with 1" by 4" vertical grained, first quality of pine flooring.

(Charge:) *Only in one corridor in the building has the above first quality flooring been used. All other floors finished with Sonoma slashed-grained flooring of the poorest quality, and joints puttied up.*

(Answer:) See answer to specification 11.

Fifteenth—It calls for No. 13 zinc flashings and No. 24 galvanized iron for all valleys; also, all gutters and tubes of No. 24 galvanized iron run up 16" under slate; also, counter flashings of four-pound lead.

(Charge:) *There are no zinc flashings whatever and no counter flashings of lead. All the flashings are tin, and also all the gutters are tin; also all the tubes are tin, and not one pound of counter flashings of lead has been used. All conductors are tin instead of number 24 galvanized iron, and all the galvanized iron that is used for cornice is No. 26, instead of No. 24, as called for.*

(Answer:) The valleys and flashings, where they could be reached, were found to fill the "standard gauge measure" as used in the United States. Remnants of valley and cornice were found in the attic; those remnants filled the gauge. Conductors could not be measured without

cutting holes in same. They are of galvanized iron. Lead flashings could not be determined upon, for the reason no appliances were at hand to reach the desired place.

Sixteenth—(Charge:) There are no ventilator flues in wooden partitions of No. 24 galvanized iron; in fact, no flues exist; only a mouth of tin about 6" high at the floor and an opening in the plate above 6" deep, to make out the appearance of a flue existing there.

(Answer:) The flues are in "existence," of galvanized iron, and extend from top of ceiling joints down to brick wall, as was determined by a line and iron sinker attached.

Seventeenth—Plaster the entire lath walls and brick walls of lavatories and toilet with a thick coat of Portland cement and sand.

(Charge:) None used. All the above is lime and sand only,

(Answer:) Specifications 3, 4, and 5 are referred to for a solution of the above.

Eighteenth—All the roofs are at least 12" to 24" lower than called for or shown on plans. The Assembly Hall is 24" lower than it calls for in the height of the story.

(Answer:) I am unable to find, either in the specifications or on the plans, any figure to denote the height of the stories. The plans are drawn to a scale of $\frac{1}{8}$ " to 1'. It is impracticable for any two mechanics to measure said scale with the ordinary measure, and arrive at the same result. In some instances, the actual height of story was greater than I could determine from a measurement of the scale drawings. The Assembly Hall actual measurement in height is 18' 11". The scale drawing denotes, as per my measurement of same, 19' 6", a difference of 7". The above is the only discrepancy in the height of stories that I discovered, where the actual measurement was lower than apparently denoted.

Nineteenth—Assembly Hall sheathed on the plaster 4' high, with 1" by 4"; T. and G.

(Charge:) No plaster back of sheathing.

(Answer:) The above statement is correct. Failed to find any reason for the omission.

Twentieth—(Charge:) Nearly all the stories are lower than they should be.

(Answer:) See answer to specification 18.

Twenty-first—(Charge:) There is no gravel under the cement floors, as called for. Only about 1" instead of 6". All the floors have a basin-like appearance in the center of all rooms.

(Answer:) The floor in the Shoe Department Hall adjoining, and sewing-room, settled in the corner. Caused, I am credibly informed, by being built on adobe fill of three feet and more in depth. The remainder of the cement floors are good, with cement base in some and wood base in others. On December 2, 1891, Hon. J. M. Curtis, architect, of San Francisco, and a member of the present Legislature, made a thorough examination of alleged poor material and faulty construction. Said report now on file, in the records of the institution, fully described the quality of materials and character of workmanship, and exonerated the contractor from any intention to perpetrate a fraud. The architects, Messrs. Copeland & Pierce, examined the work, passed upon the same, and gave their certificate that the work was well done. The

Board of Trustees accepted the report, and ordered the final payments made.

It seems to be a base slander upon those gentlemen, and also upon the honorable ladies and gentlemen composing the Board, of known integrity and ability, who have given their time and energy to organize and successfully build up an institution of such acknowledged merit. It seems incredible that those honorable ladies and gentlemen should have their names coupled with any collusion of fraud.

Twenty-second—(Charge:) The specifications were changed by the contractor, A. McElroy, so as to omit the cement base from ground and rooms with cement floors. In the laundry and dining-room, bakery and kitchen buildings, the specifications called for a cement base, to be run around all rooms having a cement floor. The pages were taken out of the specifications, and now there is no base.

(Answer:) I am unable to throw any light on the above. It appears to be a serious charge; to prove the same it will require testimony from the complainant and defendant.

Twenty-third—(Charge:) The specifications for the carpenter work for the boys' wing were forged, so as to change the size of the timbers, etc.

(Answer:) Statement as follows: Pier blocks of R. W. as called for; wall plates of pine instead of R. W., as called for. A careful measurement was made of all timbers that could be reached. Floors were cut through to ascertain the dimensions of joints. Heads of window casing were taken off to ascertain the truth or falsity of arch bars being put in or left out. The sizes of timber in all cases agree with the sizes called for in specifications, save and except the items hereinbefore mentioned.

Twenty-fourth—(Charge:) All the roof sheathing for boys' wing is 1" by 6", instead of T. and G. seasoned third quality of flooring.

(Answer:) The above specification is duly noted in reply to specification 13.

Twenty-fifth—(Charge:) All the above omissions and defects can be plainly exposed with the naked eye.

(Answer:) It occurs to the writer that the "naked eye" that exposed so much, must have been closed with a dress from some dark tinsel.

The following "seven charges" or "specifications" were sworn to by Victor Hoffmann, Jr., on the tenth day of December, 1892:

First—That this is a correct statement of work performed and materials used in the construction of the boys' wing of the Glen Ellen Home for Feeble-Minded Children, at Glen Ellen, Sonoma County, other than called for in the specifications as shown on the plans.

Second—The frame throughout, unless otherwise specified, of sound, square edge, first quality, seasoned Oregon pine.

(Charge:) No first quality, seasoned Oregon pine used. All Guerneville bull pine.

(Answer:) See reply to specification 11, first series.

Third—Wall plates were shown of heart R. W.

(Charge:) No heart R. W. used at all.

(Answer:) See reply to specification 23, first series.

Fourth—Cover all slopes of roofs, porches, dormers, ventilators, slated gables, bays, etc., with second quality 1" by 6" pine flooring.

(Charge:) Not one foot used. All 1" by 6" common surfaced on one side used. All Guerneville pine. No T. and G. Full of knots and resin.

(Answer:) See answer to specification 13, first series.

Fifth—Ceilings of all porches, and inside and outside of elevator lift shafts, lined with iron laths.

(Charge:) Not one foot put on; only common pine laths used; dangerous in case of fire.

(Answer:) The elevator shafts mentioned above are two small dumb waiter lifts about two feet square, for the purpose of sending provisions to rooms above. When the writer asked the Superintendent to take him up on the elevator, he, the Superintendent, quietly surveyed me from head to foot, and then deliberately remarked, "I can't get your two feet in."

All the changes were decided upon by consent of the architects, and approved by Board of Trustees.

Sixth—(Charge:) The specifications for the above wing, forged by the contractor, Mr. A. McElroy, so as to change the size of timber, etc., to benefit himself.

(Answer:) This charge, as well as specification 22, first series, must be decided by others.

Seventh—(Charge:) All the above changes and omissions and defects can be plainly exposed with the naked eye.

(Answer:) A slight departure has been made from the usual method of sending in reports. The writer deemed it best to re-write the "Specifications of Charges" as they were numbered and submitted, and report on each charge separately.

I have no hesitancy in saying that I consider the building good, substantial, and durable, and generally as well constructed as any public buildings in the State built under the contract system. I here desire to return thanks to the affable, courteous, gentlemanly, and efficient Superintendent, Dr. Osborne, for his assiduous attention in rendering such service as required during the examination, and affording free access to the records of the institution.

Respectfully submitted.

E. J. CROLY.

SACRAMENTO, January 11, 1893.

Sworn to and subscribed before me, this 13th day of January, A. D. 1893.

W. H. GOVAN,
Deputy Clerk Supreme Court.

To the Hon. E. P. COLGAN, State Controller, and Hon. WM. H. H. HART,
Attorney-General for the State of California:

GENTLEMEN: Complying with your request, I have made an estimate of the "shortage" claimed and reported in specifications 8, 12, and 18, and arrived at the following:

Eighth—

Iron rods, as plan calls for.....	3,052 lbs.
Iron rods, as plan put in.....	1,045 lbs.
Difference.....	2,007 lbs.

Twelfth—

Amount of lumber, as called for.....	4,010 ft.
Amount of lumber as used.....	3,008 ft.
Difference.....	1,002 ft.

Eighteenth—Assembly Hall 64x64 of 17" wall, as per measure 7" lower than plan, to be 4,032 bricks.

Respectfully yours,

E. J. CROLY.

STATE OF CALIFORNIA, }
CITY AND COUNTY OF SAN FRANCISCO. } ss.

Victor Hoffmann, Jr., being duly sworn, deposes and says:

First—That this is a correct statement of work performed and materials used in the construction of the boys' wing of the Glen Ellen Home for Feeble-Minded Children, at Glen Ellen, Sonoma County, other than called for in the specifications or shown on plans.

Second—The frame throughout, unless otherwise specified, of sound, square edge, first quality, seasoned Oregon pine. *No first quality, seasoned Oregon pine used; all Guerneville bull pine.*

Third—Wall plates were shown of heart redwood. *No heart redwood used at all.*

Fourth—Cover all slopes of roofs, porches, dormers, ventilators, slated gables, bays, etc., with second quality 1"x6" pine flooring. *Not one foot used; all 1"x6", common surfaced on one side, used; all of Guerneville pine; no T. and G.; full of knots and resin.*

Fifth—Ceilings of all porches, and inside and outside of elevator lift shafts, lined with iron laths. *Not one foot put on. Only common pine laths used. Dangerous in case of fire.*

Sixth—The specifications for the above wing were forged by the contractor, Mr. A. McElroy, so as to change the size of timbers, etc., to benefit himself.

Seventh—All the above changes and omissions and defects can be plainly exposed with the naked eye.

VICTOR HOFFMANN, JR.

Subscribed and sworn to before me, this 10th day of December, 1892.

[SEAL.]

GEORGE T. KNOX,
Notary Public.

All work performed and materials used in the construction of the Glen Ellen Home for Feeble-Minded Children, at Sonoma, other than called for in the specifications, or shown on plans.

A. McELROY,
Contractor.

Contract price, first contract, \$76,000.

Contract price, second contract, \$28,000 79.

First—No planking used for boxing; concrete all thrown in against dirt only.

Second—It calls for all exposed concrete work above ground to be most smoothly finished off with Portland cement, to form a finished base, as per details.

Not finished as called for; all surface of concrete still exposed.

Third—All arches to be laid in mortar composed of one part Portland cement to three parts sand.

No cement used in the above.

Fourth—All brick work below the second story joists to be laid up in mortar composed of one barrel Portland cement to two barrels of lime. Only about one dozen barrels used in the above.

Fifth—Balance of work to be laid up in mortar composed of one barrel of Portland cement to three barrels of lime.

Altogether in the entire brickwork of 1,300,000 bricks, only eighteen or twenty barrels of cement were used.

Sixth—No granite bearing or pier blocks in the building as called for.

All of basalt stone. No granite door sills to doors opening out in balcony as called for. No kind of stone.

Seventh—The iron stairs are not built as called for.

Eighth—The frame trusses call for upset ends of rods, and sizes as shown, $2\frac{1}{2}$ " in diameter.

They are not upset, and the diameter of the rods is only 1". "Span 60.0."

Ninth—Each tier of joists and ceiling, beams and tops of walls, and also continuous on these lines around walls parallel with wall beams, and also an additional extra course around the Assembly Hall, to have $1\frac{1}{4}$ " by 4" wall plates to serve as bond iron.

Only one course in building.

Tenth—All outside and inside openings in brick walls to have $1\frac{1}{4}$ " by $2\frac{1}{2}$ " arch bars; two to all walls 17" and under, and three to all over 17" thick.

Only one arch bar in any opening in all the buildings, and those above first floor of laundry and bakery, and also all those in the kitchen and dining-room wings are only $1\frac{1}{4}$ " by 2" thick.

Eleventh—No Oregon pine in the building, except the timbers for Assembly roof truss.

All of Guerneville bull pine, and floorings of slashed-grained stuff.

Twelfth—It calls for 2" by 8" ceiling beams in Assembly Hall ceiling, but they are only 2" by 6", and rotten at that.

Thirteenth—All slopes of roofs, porches, dormers, ventilators, slated gables, bays, etc., to be covered with second quality of 1" by 6" pine flooring.

Not one foot used; all 1" by 6", common surfaced on one side, used. All of Guerneville pine; no T. and G.; full of knots and resin.

Fourteenth—Finished floors to be laid with 1" by 4", vertical grained, first quality pine flooring.

Only in one corridor in the building has the above first quality flooring been used. All other floors finished with Sonoma slashed-grained flooring of the poorest quality, and joints are puttied up.

Fifteenth—California iron work. It calls for No. 13 zinc flashings, and No. 24 galvanized iron for all valleys; also all gutters and tubes of No. 24 galvanized iron, run up 16" under slate; also counter flashings of four-pound lead.

There are no zinc flashings, and no counter flashings of lead. All

the flashings are tin, and also all the gutters are tin; also all the tubes are tin, and not one pound of counter flashings of lead has been used. All conductors are tin, instead of No. 24 galvanized iron, and all the galvanized iron that is used for cornice is No. 26, instead of No. 24, as called for.

Sixteenth—There are no ventilator flues in wooden partitions of No. 24 galvanized iron; in fact, no flues exist; only a mouth of tin about 6" high at floor and an opening in the plate above 6" deep, to make out the appearance of a flue existing there.

Seventeenth—Plaster the entire lathed walls and brick walls of lavatories and toilet with a good thick coat of Portland cement and sand.

None used. All the above is lime and sand only.

Eighteenth—All the roofs are at least 12" to 24" lower than called for or shown on plans. The Assembly Hall is 24" lower than it calls for in the height of the story.

Nineteenth—Assembly Hall and dining-room sheathed on the plaster, 40" high with 1" by 4", T. and G.

No plaster back of sheathing.

Twentieth—Nearly all the stories are lower than they should be.

Twenty-first—There is no gravel under the cement floors as called for; only about 1" instead of 6". All the floors have a basin-like appearance in the center of all floors.

Twenty-second—The specifications were changed by the contractor, A. McElroy, so as to omit the cement base from ground and rooms with cement floors. In the laundry and dining-rooms, bakery and kitchen buildings, the specifications call for a cement base to be run around all rooms having a cement floor. The pages were torn out of the specifications, and now there is no base.

Twenty-third—The specifications for the carpenter work for the boys' wing were forged, so as to change the size of the timber, etc.

Twenty-fourth—All the roof sheathing for the boys' wing is common 1" by 6" instead of T. and G. second quality flooring.

Twenty-fifth—All the above omissions and defects can be plainly exposed with the naked eye.

TESTIMONY.

SACRAMENTO, TUESDAY EVENING, }
February 14, 1893. }

TESTIMONY OF VICTOR HOFFMANN, JR.

Sworn.

MR. EVERETT: Mr. Hoffmann, here is an affidavit, subscribed and sworn to before George T. Knox, in San Francisco, on the 10th day of December, 1892. You charge first that this is not a correct statement of the work done and the materials used in the construction of the boys' wing of the Glen Ellen Home for Feeble-Minded Children, at Glen Ellen, Sonoma County, other than called for in the specifications or shown on plans—that is where all these charges that you refer to are—in the boys' wing—they are all there? A. Yes, sir.

Q. You swore "that the frame throughout, unless otherwise specified, of sound, square edge, first quality, seasoned Oregon pine." You swear that "No first quality seasoned Oregon pine used. All Guerneville bull pine?" A. Yes, sir.

Q. All Guerneville bull pine? A. Yes, sir.

MR. SEYMOUR: What is the difference in the quality between Oregon pine and Guerneville pine? A. Well, it is third quality of pine—third quality of lumber. About the worst kind of lumber you can use.

MEMBER OF COMMITTEE: What are the floor joists? A. They are just the same.

Q. Do you know the size of the joists? A. Two by sixteen.

Q. How far apart are they? A. Sixteen inches.

Q. How far apart did you say? A. Sixteen inches.

Q. All through? A. No; I don't know the size all through. You have them all there in the specifications. They are all Guerneville pine.

Q. Mr. Hoffmann, you don't know how many floors that is in? A. No, sir; but the first part of the affidavit is taken directly from the specifications.

MR. EVERETT: And the interlineations are your charges? A. Yes, sir.

Q. These interlineations here on the paper? A. Yes, sir.

MR. EVERETT: What is the pleasure of the committee with respect to these charges? There are five charges here.

A MEMBER: Examine him on these charges.

MR. EVERETT: Mr. Hoffmann, your first charge is as to the quality. You charge there is no first quality seasoned Oregon pine used. All Guerneville bull pine? A. Yes, sir.

MR. SEYMOUR: You personally inspected this building? A. Yes, sir.

Q. "Wall plates were shown of heart redwood." You charge that no redwood was used at all? A. Yes, sir.

MR. SEYMOUR: Explain to this committee the difference between heart redwood — A. (Interrupting.) Well, heart redwood is the best quality.

Q. That may be. What is the difference between heart redwood and the common redwood? A. Heart redwood is the strongest, and the other is much inferior.

Q. Is it light? A. Yes, sir.

Q. It is light? A. Yes, sir.

Q. Comes from the top of the tree? A. I don't know about that.

MR. SEYMOUR: For you to make these charges it is insufficient evidence for this committee to go by. We want you to explain the difference in the material that was used and what is called for in the specifications. A. Well, the specifications are there and the charges. You can look over them yourself and examine.

Q. What is the difference in the quality of wood used and that called for in the specifications? A. My charges are there and you can find out.

MR. CURTIS: We want you to explain to this committee the difference. A. Well, my charges are there. That is enough for me.

Q. Well, you are here to answer questions for this committee.

A MEMBER: Has the wood any sap in it? A. Well, no; it was pretty dry, but it was not heart redwood.

Q. The fourth is—fourth charge: "Cover all slopes of roofs, porches, dormers, ventilators, slated gables, bays, etc., with second quality one by six pine flooring." You charge there has not been one foot used; all one by six common, surfaced on one side, used. All of Guerneville pine; no T. and G.; full of knots and resin? A. Yes, sir.

Q. That was all Guerneville pine? A. Yes, sir.

Q. Then in the case of the elevator lift, the fifth: "Ceilings of all porches, and inside and outside of elevator lift shafts, lined with iron laths." You charge: "Not one foot put on; only common pine laths used. Dangerous in case of fire?" A. Yes, sir.

Q. That is all the charges on that first sheet?

MR. EVERETT: Yes, that is all the charges.

MR. SEYMOUR: Make a statement, and give the details to the committee. A. The charges are all there—the material is inferior, and it is not what is called for in the specifications. Those are my charges.

MR. CURTIS: The witness should answer the questions—make a statement to this committee. He has simply made the statement here on this paper that certain things were done and that certain things were not done.

MR. COLGAN: Mr. Hoffmann's charges were made to me, and simply those that he swore to are all that we can charge to Mr. Hoffmann or inquire into from him. This statement on the first page here are all that belong to him; but there are other charges that were submitted to the Attorney-General—simply sent to him without any one making any affidavit. Mr. Hoffmann's charges were submitted to me; in fact, he showed them to me, and claimed that things were not going on as he thought proper they should, and I requested that I should have some affidavits to work on, and required the affidavit which he gave me, and the statements that are under this heading [pointing] and sworn to by him are all that he has anything to say about. The others were submitted to the Attorney-General, and we gave Mr. Croly everything that we had, and told him to investigate the matter, and that is all that Mr. Hoffmann is responsible for—those charges embraced within his affidavit.

A MEMBER: I suggest that those charges made to the Attorney-General are of no force or effect at all. They came in in an anonymous way.

MR. CURTIS: Yes, we cannot say that Mr. Hoffmann made them, so the affidavit is all that we have to go by, and is all we can enter into.

A MEMBER: Well, if these parties were here they could be put under oath and we could examine them.

MR. EVERETT: There are no specified charges made by any one but Mr. Hoffmann. The others are anonymous charges, and refer to the material generally.

MR. SEYMOUR: According to what Mr. Hoffmann has sworn to, the work is contrary to the specifications, and I don't see how we can do anything but get the Directors and have their statement and find out the difference between Oregon pine and Guerneville pine.

MR. CURTIS: We have the Directors here and the Superintendent of Construction.

MR. SEYMOUR: Well, we had better swear the Superintendent of Construction.

TESTIMONY OF M. S. REDMOND,

(Superintendent of Construction.)

Sworn.

MR. EVERETT: Now, what have you to say about this first charge. Mr. Hoffmann charges that the specifications call for the frame throughout, unless otherwise specified, of sound, square edge, first quality seasoned Oregon pine, and Mr. Hoffmann's charge is that there was no Oregon pine used—no first quality seasoned Oregon pine used. All Guerneville bull pine used? A. It is all Oregon pine with the exception of the first floor joists, two by twelve (2x12).

Q. Mr. Hoffmann said, I believe, they were two by sixteen.

MR. HOFFMANN: I did not. I said they are the same. The charges are there and the specifications for you and you can look and find out.

MR. SEYMOUR: Everything has been done entirely to your satisfaction? A. Yes, sir. The first floor joist are three by eighteen; the second floor are two by eighteen. This could not be handled in Guerneville; the machinery is not there to cut it. There is one floor three by eighteen (3x18), and another two by eighteen, and the other floor is two by twelve (2x12)—

MR. SEYMOUR (interrupting): It is impossible to remember all those. The specifications are here and we can get it from them.

Q. Have you ever been in business with the contractor—this contractor—in his employ or in partnership with him? A. No, sir.

Q. He is no relative of yours? A. No, sir.

Q. You were put in charge of this work by the Directors of the Home? A. Yes, sir.

Q. To see that it was done according to the plans and specifications? A. Yes, sir.

Q. And the specifications were thoroughly lived up to? A. Yes, sir.

MR. EVERETT: Now the next is, as to heart redwood—the charge is that no heart redwood was used at all? A. There is no redwood at all; no heart redwood, or any other redwood.

Q. What was used? A. Pine.

Q. How did this change take place? A. By the consent of the architect.

Q. Is there any difference in the cost of the pine and the other wood? A. Pine is dearer.

Q. Was anybody else consulted about these changes besides the architect? A. Yes, the contractor.

Q. Any of the Directors? A. I don't know exactly; I think the Building Committee was consulted about it.

MR. SEYMOUR: I suppose the Building Committee were around every little while to look at the building? A. Yes, sir.

Q. Taking an interest in it to see that the work was being done properly and to the best of their ability? A. Yes, sir.

Q. Here is the fourth: "Cover all slopes of roofs, porches, dormers, ventilators, slated gables, bays, etc., with second quality one by six (1"x6") pine flooring." The charge is: "Not one foot used; all one by six, common surfaced on one side, used. All of Guerneville pine; no T. and G.; full of knots and resin." What do you say about that? A. It calls for one by six surfaced pine. No T. and G. specified, and none in the specifications.

Q. Now, "all of Guerneville pine. No T. and G." What do you say about that, Mr. Redmond? A. Not unless it is specified.

MR. SEYMOUR: What is the difference in cost between that and the other? A. About \$7 or \$8.

MR. HOFFMANN: It is all common wood, and would not hold the weight of a man, because it is simply rotten.

MR. CURTIS: How do you know? Did you walk on it? A. No, sir.

Q. Well, how did you find out? A. Because I saw it.

Q. Did you get in under the roof? A. Yes, sir; and on top of the roof.

Q. That was before it was covered? A. Why, of course—

MR. SEYMOUR (interrupting): It looks as if we are going to stay here all night, and I for one want to get down to the bottom of this matter, and I want to ask Mr. Redmond if those specifications have been carried out, and if Mr. Hoffmann has any testimony to disprove it, why, I am ready to hear that, but I don't care to bring all these people here and no testimony to offer to disprove Mr. Redmond's testimony. Mr. Redmond says those specifications have all been carried out.

MR. EVERETT: What have you to say, Mr. Hoffmann?

MR. HOFFMANN: My charges are there on the paper, and you can look at them and examine them for yourself.

Q. Now, I would like to know if these specifications are drawn up in duplicate; do you know, Mr. Colgan?

MR. COLGAN: I think they are. I think the plans and specifications are copies of the originals, which are held by the builders and Trustees.

MR. CURTIS: When did you get those? A. They were filed in my office in June, I think.

Q. About the time the contract was let? A. Yes, sir; June, 1891, I think.

Q. Filed in June, 1891? A. Yes, sir.

THE CHAIRMAN: That is all.

TESTIMONY OF — COPELAND.

Sworn.

MR. EVERETT: Have you the original copies of these specifications in your pocket? A. Yes, sir.

Q. Do you swear that these copies are the same? A. I sent a copy of these specifications to Mr. Colgan about two days after the contract was signed. I forwarded them by express to Mr. Colgan, and marked them "copy," and they were sent to Mr. Colgan as a true copy of the specifications. These memorandums at the bottom of the specifications are correct.

MR. CURTIS: They have never been out of your possession? A. No, sir; and I have no doubt but that they are the same.

MR. SEYMOUR: The builder has another copy? A. Yes, sir; a true copy of that.

MR. CURTIS: The law requires it.

MR. SEYMOUR: I suppose you have nothing to do with the superintending of the work. A. Well, I generally visit the building on an average of two or three times a month—about every other week.

Q. It is your experience that the contractor was carrying out the work as the specifications called for? A. Yes, sir.

Q. You are no relative of the contractor? A. No, sir.

Q. And never did any business with him or never was his partner? A. No, sir.

MR. CURTIS: There are some changes there in the material; now, who do you really think did that—was it done by the authority of the Building Committee, or was it done without any authority by the contractor and Superintendent? A. There were some changes made, and those changes were made without any material difference in the cost of the building, which the law gave us the right to do, when the State was not at a loss. Those changes were made by the consent of the Trustees after consulting with the architect, and no other changes were made.

MR. EVERETT: Could the contractor derive any benefit from it by reason of any of these changes in a money sense. A. No, sir; it resulted in no loss to the State.

MR. CURTIS: So far the testimony shows that there has been but one change, and that is in regard to the redwood wall plates? A. Well, I will tell you about that matter. The specifications called for those redwood wall plates. Now, when this matter came up I found that I could use Oregon pine to better advantage and benefit, and it was stronger, and the pine cost the same as the redwood—if anything, the pine cost a little more—so I ordered the contractor to put in the pine and he did so, and that is all there is about that.

Q. There was no material difference in the cost? A. No; and I believe the law gives us the right to make the change under the circumstances; that is, providing it does not increase or decrease the cost of the building.

MR. EVERETT: Are there any further questions, gentlemen?

MR. SEYMOUR: I have none.

MR. EVERETT: That is all.

TESTIMONY OF GEORGE W. GIBBS.

Sworn.

MR. EVERETT: Are you one of the Board of Directors? A. Yes, sir; I am President of the Board.

Q. Then tell us what you know about this. A. Well, gentlemen, I believe that that contract is well done. I believe the contractor done his work faithfully. I have been up there personally and saw it—the work—as it progressed, and I have thrown out bricks which I thought ought not to go in, and I think all the Directors have been very careful. I built a great many brick buildings, that is to say, I own a great many in San Francisco, and I know something about buildings, and I don't believe that there is any better building put up than this one that is put up there and the one we are discussing.

Q. These changes which were made, were made with the consent of the Board of Directors? A. Yes, sir; none except by the consent of the Board of Directors. We have been up there and they were pointed out to us, and it was done as the architect suggested, after being carefully considered. After the building was finished, we had two posts taken out which we would not consent to allow to remain, as in our judgment it would not be proper.

MR. SEYMOUR: You had those taken out? A. Yes, sir; and he said it was very hard on him.

Q. And that is the only thing that you discovered in the building that you thought he should take out? A. Yes, sir.

Q. If you were putting up this building for yourself, would you be satisfied with the work? A. Yes, sir; perfectly.

MR. HOFFMANN: What about the first joists that you made Mr. McElroy take out? A. That was all right, I think.

Q. You made him take it out? A. Well, the architect didn't like it.

Q. Was it Oregon pine? A. The first floor?

Q. Yes, sir. A. No, sir; Mendocino.

MR. SEYMOUR: Have you been a Director since the contract was let? A. Yes, sir; on all of the buildings; I have been all over there; I was on the Building Committee.

Q. You live in San Francisco? A. Yes, sir; I live in San Francisco.

Q. What is your business? A. I am in the iron business. I never knew any of these gentlemen before. I never knew the architects, or any of them, before I was appointed to the Board. I never saw any of them—Mr. McElroy, or any of them.

MR. EVERETT: If you wish to ask any questions, Mr. Hoffmann, you may do so.

MR. HOFFMANN: Well, Mr. McElroy was asked to take out this Guerneville pine.

MR. SEYMOUR: Some of the first floor joists were taken out? A. Yes, sir; some were put in that the architect did not consider were in accordance with the plans and specifications, and they were ordered to be removed by him, and they were removed.

MR. EVERETT: All of them? A. Yes, sir; all that was not in accordance with the plans and specifications.

TESTIMONY OF F. W. LOUGEE.

Sworn.

MR. EVERETT: We would like to hear from you, Mr. Lougee, what you have to say about this matter in relation to the boys' wing of this building we are considering. A. It was a conceived plan and the contract let before I became a Trustee, and about one story was up the first visit I made there. When I went there I met Mr. Gibbs for the first time, and I met Judge Overton and the other Trustees, and they were discussing in relation to the walls, and I joined in the discussion, and came to the conclusion that the base of the work was not according to the specifications; that was the first business connected with the building, and we ordered it down. Now, from that time I have been to the Home at least once a month, and I think more than that, and although not on the Building Committee, I was all over with the committee, and I know something about constructing buildings. I constructed some for myself, and had considerable to do with buildings, and I regard that building as a most substantial and complete building. There were some little things that I pointed out with Mr. Gibbs that we thought ought to be changed, and they were changed. I examined the painting, the glass, the lumber, and everything connected with that building, and I pronounce it better than any other building I ever saw in this State of the kind.

Q. Is it one that you would be satisfied with if you were having it built for yourself? A. Well, I never had one built as good as that.

Q. Are you satisfied that the State is not a loser? A. Well, it goes without saying that in the construction of a building there may be something lost in the specifications, but so far as that building is concerned, and according to the architect's testimony, it is up to my idea of a building.

TESTIMONY OF A. P. OVERTON,

(Chairman of the Building Committee.)

Sworn.

MR. EVERETT: Now, Judge Overton, we would like to hear from you. A. Well, do you want me to make a statement?

Q. Tell as near as you can all about this. A. I will commence and tell you what I know of it.

Q. Are you Chairman of the Building Committee? A. Yes, sir.

Q. You are thoroughly familiar with the building? A. Yes, and do a great deal of building myself.

Q. Well, go on. A. Well, several months ago, prior to the filing of those charges, Mr. Hoffmann met me one day on Montgomery Street, and he told me that there was some misunderstanding between himself and Mr. McElroy—that he had not settled with him—some misunderstanding, and that unless Mr. McElroy settled with him there would be some charges preferred, and statements filed in relation to the insufficiency of that building; and I said to Mr. Hoffmann, if there is anything between you and Mr. McElroy you had better settle it in

Court, for our Board don't meet for the purpose of settling these matters. If he owes you anything you go into Court and collect from him. (After that I heard of these charges.) I left him, however, and told him it was none of our business, and then those charges were filed. I visited the place pretty frequently. I was living, during the construction of those buildings, at Santa Rosa, and I would travel down there occasionally. I take an interest in those things, and I wanted to see that the building was built according to the plans and specifications, and I had been one of the kickers about sticking right up to the letter of the contract and specifications. In the commencement Mr. McElroy was sent stone by mistake which was an inch too narrow on the base. Mr. Harney was on the Building Committee, and he thought that it would be a great loss to the contractor, Mr. McElroy, to lose it, but I said, it cannot be helped; he cannot put it in. I says, those steps are too narrow; I said, they are dangerous, and they must be according to the plans and specifications. Well, Colonel Harney made the remark, he has entered into a contract with the State to build a building under a contract and specifications, and they will have to be complied with so long as I am on this Board; and the result was he had to get the stone, and some of this other is lying there to his loss. I have contended all the way through that we should not change the original contract, and that we should build it according to the contract; and, as Mr. Lougee said, we made them take down some of the work—we refused to allow some of the work to go into the building, and they had to be hauled away. With Mr. Redmond watching him very closely, and all the proposed changes would be referred to me, and I would consult with Mr. Pierce to ascertain that it would not be to the disadvantage of the building in question—taking their entire opinion, and I claim to be something of a builder myself, and a pretty good mechanic, and I don't know and cannot now call to mind any changes made from the original contract that has been to the disadvantage of that building or to the State. In relation to those pine sills—that is, those redwood sills—we preferred the pine so as to get them in longer pieces, and what is the use to have redwood sills when pine rafters sets on it. And also, I considered the pine better, and therefore we permitted the change.

MR. HOFFMANN: Do you consider the roof is according to the plans and specifications? A. The specifications do not call for T. and G. on the roof.

MR. SEYMOUR (to Mr. Hoffmann): Have you been in the employ of this contractor? A. No, sir.

Q. Have you sold him any material? A. No, sir.

Q. Have you had any difficulty with him? A. That is my business.

Q. And it is the business of this committee also. You have put this Legislature to the expense of bringing all those witnesses here, and you are keeping the members of this committee from attending to their duties on other committees. We want to know the foundation for these charges, if there be any, or the animus that is behind them.

Now, Mr. Chairman, I move that these charges be dismissed.

MR. EVERETT: Have you ever had any quarrel with the contractor? A. That is my own private affairs; that has nothing to do with this matter.

MR. SEYMOUR: I renew my motion, Mr. Chairman. I move that these charges be dismissed, and that this committee adjourn to the call of the Chair.

Ayes—Messrs. Seymour, Biggy, Taggart, and Bennett. Noes—Mr. Curtis.

[Whereupon, adjournment was taken to the call of the Chair.]

REPORT OF SPECIAL COMMITTEE.

MR. SPEAKER: Your special committee which, in connection with a similar committee from the Senate, were appointed and directed to investigate certain charges made relating to the construction of some of the buildings at the Home for the Care and Training of the Feeble-Minded, located at Glen Ellen, Sonoma County, beg leave to submit the following report:

Your committee visited the premises at Glen Ellen, and proceeded at once to inspect and thoroughly examine the buildings in question; that thereafter, at regularly appointed meetings, and in pursuance to the issuance of subpoenas, witnesses whom, in the judgment of your committee, were material to aid in determining the charges, appeared and gave testimony, which testimony accompanies this report, and among whom were the following: George W. Gibbs, Trustee; F. W. Lougee, Trustee; and Hon. A. P. Overton, Trustee, and Chairman of the Building Committee, together with being a practical builder, and all of whom are men of sterling integrity and business capacity.

In addition to the foregoing witnesses, we examined Victor Hoffmann, Jr., the complaining witness, though laboring under some disadvantage in doing so, inasmuch as he refused to answer some of the questions propounded, and which were, in the judgment of your committee, relevant, that we might the better reach the bottom of the charges, and in this connection we are constrained to say, and we do hereby disapprove of said last named witness' manner and general conduct before said committee, the same being discourteous and disrespectful.

Your committee finds, as follows:

First—That the charges made to the Controller of State by said Victor Hoffmann, Jr., were not founded in fact, and are not borne out by the testimony; but, on the contrary, in the opinion of your committee, is the result of animus.

Second—That the testimony of all the witnesses goes to show that the building is constructed in accordance with the specifications, with only slight changes, and which were made with and by the authority of the Board of Trustees, said changes being of no advantage to the contractor, nor detriment to the State, and which changes, under the circumstances, are allowed by law.

Third—We have inspected the buildings, and find that the State may well congratulate itself upon having a building as cheaply and as well constructed as any of like character in the State, either public or private.

Fourth—Answering the charges set forth by Victor Hoffmann, Jr., to wit: that the specifications were forged, with the view to serve the purpose of the contractor, beg to say, your committee, together with the Controller, compared the alleged forged specifications with the original which was filed with the Controller, and find the charge without foundation, the two being identical and exact copies, and no changes or erasures appearing.

Fifth—Your committee having duly and carefully considered the charges set forth in said complaint, and the testimony taken in connection therewith, conclude that there is not a scintilla of evidence to warrant any of the said charges, the testimony to the contrary being conclusive, and we therefore freely and fully exonerate the contractor from any and all charges set forth.

We submit herewith a copy of the charges, together with the report of the expert sent to inspect the premises at Glen Ellen, by the Controller; also, a copy of the transcript of the testimony taken before the committee.

All of which is respectfully submitted.

CURTIS, Chairman,
TAGGART,
BENNETT,
Assembly Committee.
EVERETT, Chairman,
SEYMOUR,
BIGGY,
Senate Committee.

REPORT
ON THE
IMPORTATION OF PARASITES
AND
PREDACEOUS INSECTS,

BY THE
STATE BOARD OF HORTICULTURE.

IN ACCORDANCE WITH AN ACT OF THE LEGISLATURE, APPROVED
MARCH 31, 1891.



SACRAMENTO:
STATE OFFICE, : : : : A. J. JOHNSTON, SUPT. STATE PRINTING.

1892.

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REPORT.

To Hon. H. H. MARKHAM, Governor, and to the honorable the Legislature of California:

In accordance with an Act (Chapter CXCIV, Laws of 1891) entitled "An Act to appropriate \$5,000 for the purpose of sending an expert to Australia, New Zealand, and adjacent countries, to collect and import into this State parasites and predaceous insects," approved March 31, 1891, we beg to submit the following report:

Soon after the passage of this Act we applied to the Secretary of Agriculture at Washington, D. C., to aid us in this investigation by sending on this mission Mr. Albert Koebele, an accredited agent of that department, and who, on a former mission, discovered the *Vedalia cardinalis*. We also requested that his salary be met by that department, we assuming to pay his expenses. This the Secretary consented to do, and on August 20, 1891, Mr. Koebele sailed for Australia, where he remained about a year. As to what was accomplished, we beg to refer you to his report and to the report of the Entomologist of this Board, which are herewith appended.

AMOUNT EXPENDED.

The following are the expenditures incurred; all vouchers and itemized bills are on file in the office of the State Controller:

1891—Oct. 31—Voucher No. 1.....	\$395 25
Oct. 31—Voucher No. 2.....	380 68
Nov. 30—Voucher No. 3.....	313 43
Dec. 28—Voucher No. 4.....	236 87
1892—Jan. 25—Voucher No. 5.....	297 54
Feb. 29—Voucher No. 6.....	312 00
Mar. 21—Voucher No. 7.....	297 47
Apr. 25—Voucher No. 8.....	365 52
Aug. 4—Voucher No. 9.....	918 12
Sept. 26—Voucher No. 10.....	131 65
Cost of transmitting funds—	
Voucher No. 11.....	24 75
Voucher No. 12.....	10 00
Voucher No. 13.....	15 00
Voucher No. 14.....	13 90
Cost of illustrating report—Voucher No. 15.....	625 00
Total.....	\$4,337 18
Balance unexpended.....	662 82

This amount has been returned to the State Treasurer, as is shown by certificate from Controller's office, No. 163.

Our thanks are especially due to Hon. J. M. Rusk, Secretary of Agriculture, and to all who rendered us assistance in this research.

Very respectfully,

ELLWOOD COOPER,
L. W. BUCK,
FRANK A. KIMBALL,
J. L. MOSHER,
A. BLOCK,
FRED. C. MILES,
SOL. RUNYON,
I. H. THOMAS,
A. F. WHITE,
Commissioners.

B. M. LELONG,
Secretary and Chief Horticultural Officer.

SAN FRANCISCO, CAL., December 5, 1892.

EXPERT'S TRIP TO FOREIGN COUNTRIES.

NEW SPECIES INTRODUCED.

To Hon. ELLWOOD COOPER, President, and to the honorable State Board of Horticulture:

SIR: At your request I give herewith some notes on the condition of fruit trees and the coccids injurious thereto in Australia, also the work of natural parasites upon the same in that country, as found during my recent mission; at the same time giving you a statement as to how I found the recently introduced species on my trip to Los Angeles and Santa Barbara at the beginning of September, 1892, and my opinion of their future work in this country.

My report upon this last trip has been forwarded to the Secretary of Agriculture, to whom I had to report as directed in letter of authorization, dated May 29, 1891. In it I give a full account of all the beneficial insects found and forwarded to this country, as also of such as were studied in the field, and which may be introduced at some future time. As this report will not appear in print until some time during 1893, I will briefly acquaint you with what was accomplished.

As you are aware, my chief work was to search for such parasitic and predaceous insects as prey upon the coccids injurious to our fruit trees. These are the so-called red scale (*Aspidiotus aurantii*, Mask.), detrimental to our orange trees; the pernicious scale (*Aspidiotus perniciosus*, Comst.), upon and destructive to various deciduous trees; and the various black scales (*Lecanium*), as the principal species.

The red scale is present all over Australia upon citrus and various other trees and shrubs, and has been known upon orange trees for the last fifty years. Whether the insect is a native or introduced cannot be said with any certainty, but as the conditions indicate, I think it is an introduced species. Internal parasites could rarely be found upon the same; chiefly upon the male scales, small holes were occasionally found, from whence minute chalcid flies had issued. None of these were bred.

The black scales are represented by various species, and our most common forms, *Lecanium oleæ*, Bernard, and *L. hesperidum*, Linn., are found everywhere in New Zealand and Australia, and in my opinion are indigenous to the latter country. Numerous internal parasites were found preying upon these two coccids, and were repeatedly sent here. It is in predaceous insects feeding upon the various coccids that Australia is immensely rich, and these are chiefly ladybirds (*Coccinellidæ*).

The group *Orcus* resembles our own form *Chilocorus*, of which *C. bivulnerus* is well known in California. The habits are the same; they will breed upon a variety of scales from early spring until winter, when the mature insects will hibernate for a time. Four species of these were sent here, and two of them, *O. chalybeus* and *O. australasia*, in very

large numbers. *Cryptolæmus* was found in two forms, *C. Montrouzieri* and *C. australis*. The larvæ of these are peculiar, as they are covered above with contiguous, white, mealy, secreted appendages; they feed chiefly upon mealy bugs (*Dactylopius*). The first named species, which was sent here in large numbers, is also doing good work in feeding upon the various black scales.

Bucolus is closely related to *Cryptolæmus*, and two forms were sent here. Probably the most valuable of all the scale-feeding *Coccinellidæ* are the *Rhizobiids*. This group is very largely represented in Australia, and only a few forms are reported from other parts of the world. America had none previous to this importation. The insects are closely related to our *Scymnids*, but some of the species are much larger. They feed upon all sorts of scales, and their larvæ were found at all times during the year in Australia. Some fifteen species, nearly all unknown to science, were sent here.

Scymnodes also resembles *Rhizobius*; but one species, *S. Koebelei*, Blackburn, and a variety of the same, named *varipes*, were sent here. These are expected to feed upon black scales and *Chionaspids*. *Erithionyx* is quite a large black beetle covered with short, yellowish-brown hairs; the one species, *E. lanosus*, was found feeding on *Chionaspis*, upon orange trees infested with black scale, and was repeatedly sent here. These species were liberated by you upon *Lecanium*.

Scymnus is known to almost every one; we know the value of our *S. marginicollis* in California, and the good work it is able to do upon a variety of scales. I have so far eight species named from Australia and a number from New Zealand, which were sent here. These can be expected to feed upon most of our coccids.

Mydus resembles a *Scymnid*, and *M. pygmæus*, feeding upon mealy bugs, was sent here; and there are a number of groups of small, roundish *Coccinellidæ*, of which *Gymnoscymnus*, *Cycloscymnus*, *Libernes*, *Cyreme*, and *Serangium*, found upon a variety of coccids, were sent here.

As to the aphis-feeding *Coccinellidæ*, all the species that could be obtained were collected and forwarded. Some of these will not only feed upon plant-lice, but will also live upon scale insects. *Coccinella antipodum* has only been found by me to prey upon scales in New Zealand. *Coccinella arcuata* was found in southern Queensland feeding upon the orange aphis, but on the Richmond River, New South Wales, the same insect was feeding upon *Lecanium filicum* on a fern, and again at Levuca, Fiji, it was feeding upon an *Aleurodes* on taro leaves. *Leis conformis*, which feeds on plant-lice, will, after these have all disappeared, begin its destructive work upon the woolly aphis, of which it cleans whole orchards, as observed in South Australia and Victoria.

In all, some forty thousand specimens of ladybirds were collected by me during this last trip, and forwarded to California, and I can say positively that no mistake was made in sending anything but beneficial insects.

It was timely discovered that nearly all the larvæ of the ladybirds in Australia are preyed upon by parasites, in certain instances almost destroying all of these. The pupæ are also preyed upon by chalcid parasites, and in consequence only the mature insects were sent, thus leaving all their enemies behind, and we shall thereby have the benefit of the work of these insects without the detriment of the parasites preying upon them.

One of the best enemies to the black scale in Australia is the larva of a small moth (*Thalpochares*), which builds itself a house, so to speak, by spinning together the remains of the eaten-out scales, etc. With this protection against its enemies, it is able to walk over the tree, and thus devours large numbers of the scales daily. The transformations of this insect have not been closely studied in the field, but from what I have seen must be very rapid, especially in warm weather; and as full-grown larvæ were found upon the same tree about every two weeks, it will take at the most four weeks from egg to mature insect during summer. When full grown the larva spins most anywhere on the tree, but prefers any crevice on branches or trunk of tree, between the forks, and also on the ground at the base of stem. According to the season or circumstances, they may pupate at once or remain for several months, and in no case should they be disturbed in any way, for if taken out of their cocoon they will rarely be able to spin another and will invariably perish. Two species were found in Australia, and one at least is introduced and established.

The trunks and branches of citrus trees in Australia are often covered with fine, silky webs interwoven with remains of scales, and under this are found numerous larvæ of a small *Tineid* moth that devour the coccids thereon. These latter are chiefly *Chionaspis citri* and *Mytilaspis Gloverii*. Efforts are now being made to introduce this valuable little moth here, and a number were liberated upon trees infested with the pernicious scale.

Aside from the numerous parasites and predaceous insects destructive to scale insects in Australia, there exist several species of fungoids detrimental to various coccids. *Microcera coccophilla*, if once started upon a tree infested with the red scale, will keep on spreading until all the scales are destroyed. The same may be said of the fungi living at the expense of the black scales. I have had a number of small orange trees infested with *Lecanium*, on which also were ants that kept away the natural enemies—upon which the *Thalpochares* larvæ were collected regularly, as these with their protecting armor are quite safe here—on some of which the fungus began to spread until every black scale upon the trees was destroyed. The fungus will apparently only grow during damp weather, and I shall try it in the early spring. If once started this could easily be disseminated.

The condition of the olive trees, as observed in South Australia, is fairly good. Some of these are more or less infested with black scale (*Lecanium cassiniæ*, Mask.), but notwithstanding this, trees seen on a hillside, growing wild, so to speak, were loaded with fruit and but few of the trees had scales in quantity. It was at a time when everything was completely dry that I visited South Australia, and the predaceous insects found feeding upon these scales may not be all that prey upon them at other times of the year. The species found in larva, pupa, and imago state upon olive were *Rhizobius hirtellus*, *R. cæcus*, and *Cyreme nigellum*. The first-named species was present in very large numbers, and was found upon various scales in New South Wales, as also other coccids. Both the larvæ and pupæ of the *Rhizobiids* were found destroyed in large numbers by parasites.

In New South Wales, where my work kept me during the time among the orange trees chiefly, the species of *Coccinellids* found preying upon *Lecanium* were far more numerous. I will mention but a few, which

are always present in large numbers with the black scales. These are: *Orcus australasia*, *Rhizobius ventralis*, *R. hirtellus*, *Cryptolæmus Montrouzieri*, and the larva of the *Thalpochara* moth, which alone is able to free whole trees in a very short time. It is only upon bushes or young trees generally covered with large numbers of ants, which prevent the predaceous insects from coming near, that the black scales become numerous. Upon old trees these coccids are but rarely found in numbers, and if so, only upon an occasional branch, which is speedily cleaned again by the numerous predaceous insects preying upon them.

The red scale (*Aspidiotus aurantii*) is, perhaps, aside from *Mytilaspis Gloverii* and *Chionaspis citri*, the most numerous coccid upon citrus trees in Australia, and in fact is at present the most injurious to citrus trees in that country; but its progress is checked by its natural enemies. Australia is in possession of more than enough natural enemies to keep this coccid in check with ease, although nearly all these are preyed upon by parasites. To spray or fumigate to kill the red scale would also mean the destruction of the numerous beneficial insects, and those that were not killed outright would mostly leave the orchard in search of other food, and the consequence would be that in a few months the trees would again become infested, with but few enemies present, and the scales would do great damage unless "the spray is again applied."

As it is, at the present time in Australia, orange and lemon trees are often planted in almost any locality, without regard to the situation, condition of soil, drainage, climate, and other conditions. The consequence is that some of these orchards become diseased, presumably from the effects of the red scale, and, as is the case in the Gorden district, near Sydney, one tree after another will succumb. An examination showed that these trees had been planted in heavy, clayey soil, without any drainage, and were invariably destroyed by the so-called "foot-rot." The fact is, that if an orange or lemon orchard, as the case may be, is left for years without any attention whatever, the weeds allowed to grow, and planted in an unsuitable location or soil, before very long the leaves become yellow and drop off slowly, and in time the remaining green leaves become covered with red scales, since, as is always the case, the predaceous insects preying upon this scale will not be found on such trees, as they prefer those with dense foliage and shade. Such trees may thus linger for months, or even years, before dying, and may even again recover if proper attention is given them. In one of such orchards, of several acres in extent, but a few living twigs covered with red scale were found, yet not a single one of the many predaceous insects preying upon them could be noticed. In another instance, an orchard of some eight or ten acres and about thirty-five years old, the proprietor of which always supplied sufficient manure and kept the ground cultivated, during the whole time of its existence had been infested with red as well as other scales, and yet but a very few trees along the border of one side could be found that showed any traces of such. The whole orchard during the thirty-five years had never been pruned or sprayed, nor even had the trunks ever been washed. Numerous dead limbs were present, the stems and limbs partly covered with lichens, and yet I did not meet with a finer lot of trees in Australia—such glossy, deep-green foliage, abundance of fruit, and so free from scale.

A large number of predaceous insects were found preying upon the red scale in Australia. Of the most numerous were *Orcus chalybeus*, *Orcus australasia*, and *Rhizobius satellus*. Aside from these, numerous other species of *Rhizobiids* were found preying upon this scale, and many species of *Scymnids*, all of which were sent here. In my report all of these are treated separately.

On my visit to Los Angeles and Santa Barbara in the beginning of September, *Orcus chalybeus* were found at Los Angeles, where this species was liberated upon the red scale, in such numbers that we can reasonably hope they will have increased by next April, so that we may distribute them throughout many orchards.

The condition in which the insects liberated by you upon the olive scale were found was even better than I had expected. The species present were *Orcus chalybeus*, *O. australasia*, *Rhizobius ventralis*, and *R. debilis*. Without doubt other species sent to and liberated by you will appear in large numbers next spring. It is impossible to find, within a couple of hours' search, all the species present in a large orchard. *Orcus australasia* and *Rhizobius debilis* are feeding upon the pernicious scale (*Aspidiotus perniciosus*) at Alameda, where they were liberated by Mr. Craw, who at the same time left a number of *O. chalybeus* upon these coccids; but these have all disappeared, though, positively, not to die. They will be found upon *Lecanium* or *Chionaspis* in time. I have never found this insect feeding upon *Lecanium* in Australia, and did not expect it would feed upon *L. oleæ* with you; but this will only show that a coccid-feeding ladybird, if at liberty, will most always find its food for future generations, and no doubt most of the species liberated here will be found again in numbers upon some scale.

In regard to the two species of *Orcus* we now possess, they were found, if my observations in the field are correct, to be two-brooded in Australia, the mature insects hibernating during winter. The *Rhizobius* are much faster in breeding, and I estimate about six broods per year. The larvæ of these, although not numerous at the time, were found in midwinter.

These insects here, with but few enemies, should increase about fifty-fold with each brood, and from one female of *Orcus* we should expect about 2,500 beetles at the end of the season, under favorable circumstances; while of *Rhizobius*, with six broods, upward of 15,000,000,000 beetles could be expected, and these figures will not be much out of the way in your orchard, where there is an unlimited supply of food.

On a day when the temperature reached above 100° F. in the shade in Australia, the number of *Orcus chalybeus* upon each orange tree could be estimated, as all the beetles came down on the stems near the ground, which was a beautiful sight for an enthusiastic bug-hunter, and from 175 to 300 beetles were collected on each stem; but the larvæ of the same upon the trees were probably ten times as many. It should be understood that these trees are never sprayed.

Some 1,500 different beneficial ladybirds are known at present in the world, and more than half of these will feed upon scale insects. We should do our best to import as many of these as possible, and at the same time guard against any new importations of coccids.

It is not that we should exterminate our scale insects—this is a matter of impossibility even with the best of natural enemies or parasites, and would be contrary to nature; but we can, with the proper natural

enemies, keep these insects in check to such an extent that they will not injure our trees, and fruit growing will be possible for all time to come.

Respectfully yours,

ALAMEDA, CAL., November 14, 1892.

ALBERT KOEBELE.

REPORT ON CONDITION OF NEWLY INTRODUCED SPECIES IN CALIFORNIA.

To B. M. LELONG, Esq., Secretary, and to the honorable State Board of Horticulture:

SIR: In accordance with letter of instructions of August 28th, to proceed with Mr. Albert Koebele to Los Angeles, San Gabriel, Orange, and Santa Barbara Counties, and make an inspection and report upon the condition of the beneficial insects that have been placed there, and which were sent over by Mr. Koebele from Australia during his recent mission to that country, having completed said examination, I beg to herewith submit the following report:

On August 31st, Mr. Albert Koebele and I visited the orange orchard of Albert F. Kercheval, at Los Angeles, where the first colonies of ladybirds from Australia were placed, and which arrived last winter and spring. Besides ourselves there were present John Scott, Horticultural Commissioner of Los Angeles County; D. W. Coquillett, Special Agent of the Department of Agriculture; Henry W. Kruckeberg, editor "Rural Californian;" Col. J. R. Dobbins, A. Scott Chapman, Esq., of San Gabriel, and others.

It was at this place that the beetles of the first shipment were placed. These arrived in very feeble condition. Mr. Koebele says that they probably hibernated in Australia, and possibly had deposited their eggs before he captured them. However, after a careful examination of this place we found beetles, eggs, larvæ, and pupæ of the steel-blue ladybird (*Orcus chalybeus*). Insects of later importations were received in good condition, and upon our visit we found sufficient of their eggs and pupæ to justify the assertion that this species has become established at Los Angeles. Mr. Koebele says this is the insect that keeps the red scale (*Aspidiotus aurantii*) in check in the orange groves in Australia, notwithstanding that a parasite preys on these ladybirds there, which destroys fully 50 per cent of their first brood, and about 90 per cent of the second brood. Great care was taken not to introduce this parasite, which is such a deadly enemy to them. When Mr. Koebele discovered that the young of these ladybirds were preyed upon by a parasite, he sent only mature beetles to California. Thus it may be safely said, that it will only be a matter of time when we shall reasonably hope for the rapid increase of these valuable insects, and even better results from them than are obtained in Australia.

In another orchard at Los Angeles where a colony had been placed, we found but few beetles and larvæ, but enough to show that at this place also they had become established.

On September 1st, Mr. John Scott and Mr. Hiram Hamilton, Horticultural Commissioners of Los Angeles and Orange Counties, respectively, and I examined the orchard at Orange where a colony of the steel-blue ladybirds you sent Mr. Hamilton had been placed. We found

these doing well, and there were plenty of beetles and eggs from which small larvæ were hatching and were at work upon the red scale. These ladybirds had only been out on the trees sixteen days, and as they are breeding there successfully, it is conclusive proof that the earlier importations had already deposited their eggs before they arrived.

On September 2d, Mr. John Scott, Col. J. R. Dobbins, of San Gabriel, Mr. Koebele, and I inspected the Dobbins orchard at San Gabriel, where one of the first colonies of these insects was placed. These, too, arrived in very feeble condition, and in fact, hardly any survived the trip.

A later importation, which you sent Mr. Chapman, arrived in good condition, but as they were liberated on large trees they had no doubt flown over the orchard, where they will appear later on.

On September 3d, Mr. Koebele and I visited Hon. Ellwood Cooper's orchard at Santa Barbara. It was at this place that several species were liberated in the open orchard immediately upon their arrival. We found four species that have become well established, viz.: *Orcus chalybeus*, *Orcus australasia*, *Rhizobius ventralis*, and a small *Scymnodes*. Of all these we found beetles, eggs, larvæ, and pupæ. The trees upon which they were placed are infested with black scale, and they are feeding upon it. Mr. Cooper placed these insects in an orchard where he considered the conditions as to temperature and protection from the prevailing winds favorable for their colonization.

On September 9th, I visited the orchard at Haywards, Alameda County, where Mr. Koebele had himself placed several species. I found beetles of the *Orcus australasia* and *Rhizobius ventralis*, apparently doing well. At this place a muslin tent was placed over a lemon tree where the *Thalpochares coccaphagus*, an enemy to the black scale, is being bred.

I placed a small colony of *Orcus australasia* and *Rhizobius ventralis* upon trees infested with pernicious scale in Alameda, and upon examination two days ago we found beetles, larvæ, and pupæ. The larvæ have fed upon the scale and passed through their molts into well-developed pupæ, proving conclusively that they will prey upon it.

The new Australian ladybird, *Novius Koebelei*, of which only three live insects were received last April, and which were bred in the office, have multiplied very rapidly, and from these many thousands have been distributed. The successful colonization of this ladybird has fully sustained Mr. Koebele in the statement, that they are even better than the *Vedalia cardinalis* in keeping the cottony cushion scale in check. The colony of fifty which you gave Mr. John Scott, of Los Angeles, have done well, and from those he has distributed several thousands, and is well pleased with their work.

From the foregoing it will be seen that five new species of beneficial insects have been successfully introduced and become established in the State, and while we cannot expect much benefit from them this year, as time is required for those introduced to breed, I am confident that next spring and summer they will be abundant, and colonies can then be furnished to growers throughout the State.

The unprecedented success of the *Vedalia cardinalis* has caused fruit growers and others to expect immediate and similar results from all of the new insects, but as the *Orcus chalybeus* and *Orcus australasia* have only three generations, their increase will be slower; however, I feel satisfied that the final result will be equally as satisfactory as with

the *Vedalia*. For the present, orchardists having trees infested with red scale should not neglect spraying or fumigating this fall, so that their fruit will be bright and merchantable, and prevent injury to the trees for the present from the pernicious effects of the pest.

Mr. Koebele has reviewed this report, and concurs in the same.

ALEXANDER CRAW,
Entomologist and Quarantine Officer.

SAN FRANCISCO, CAL., September 10, 1892.

REPORT
OF
SENATE COMMITTEE ON CORPORATIONS

RELATIVE TO

Assembly Bill No. 10—An Act in relation to reassessment of property, and the equalization of the same, in cases where a former assessment is invalid or void, and in relation to collection of taxes on said reassessment.

REPORT.

MR. PRESIDENT: Your Committee on Corporations, having had under consideration Assembly Bill No. 10, "An Act in relation to reassessment of property, and the equalization of the same in cases where a former assessment is invalid or void, and in relation to collection of taxes on said reassessments," and having agreed to report to the Senate a substitute bill, and recommend that such substitute do pass, submit the following report:

The committee, in the investigation of said bill, has taken a large amount of testimony of witnesses subpoenaed by the committee, and has had before it documentary evidence from different departments of the State Government, including the special report of the Attorney-General of the State of California on railroad tax cases and railroad taxation, dated January 17, 1893, and from such testimony, and the judicial records and decisions of this State and of the United States, find the following facts:

That, since the adoption of the new Constitution, there has been a difference of opinion between the owners of certain railroad properties assessed by the State Board of Equalization and certain officials of the State of California as to the proper method of executing the provisions of the Constitution of the State of California pertaining to the assessment and collection of taxes upon railroads operated in more than one county.

That, for the years 1880, 1881, 1882, 1883, 1884, 1885, 1886, and 1887, a great number of suits were brought by the State against said railroads for the collection of taxes levied upon the various assessments of those years, and that the litigation has been extended and expensive. That, in such litigation, up to the year 1885, the railroads either paid in full or a portion of the taxes, or made tenders in Court of a considerable part of the taxes claimed.

That the result of such litigation was that the assessments for said years prior to 1885 were judicially determined to be invalid; the said payments and tenders were accepted by the State and the money paid into the treasury.

The said judgments and orders rendered in said causes have become final and conclusive upon all the parties.

Under an Act of the Legislature, approved April 23, 1880, authorizing any county, or city and county, where a tax was delinquent, to sue in its own name for the recovery thereof, whether the same be for county, or for city and county, and State purposes or taxes, or either of them, sixty-three actions were commenced by the District Attorneys of the respective counties of the State, in the Superior Courts, for the recovery of the delinquent taxes alleged to be due from the Southern Pacific Railroad Company and the Central Pacific Railroad Company, under assessments made by the State Board of Equalization upon their respective franchises, roadways, roadbeds, rails, and rolling stock, for the

years 1880, 1881, and 1882. The fences of the railroad companies were estimated as a part of the property, and were assessed as such by said State Board of Equalization. All these cases were subsequently transferred to the Circuit Court of the United States, and came on regularly for trial in that Court, and the parties waiving a jury, each and all of them were submitted to the Court for decision.

On the twenty-eighth day of February, 1884, the Court ordered that judgment be entered in favor of the defendants in all the actions, but before judgment was so entered, on February 29, 1884, a stipulation was presented to the Court, signed by the attorney for the defendants, and by the Attorney-General of the State for the plaintiffs, agreeing that, notwithstanding the decision of the Court, judgment should be entered in favor of the plaintiff in the respective actions for the face of the taxes; and the Circuit Court thereupon vacated the order theretofore entered for judgment in favor of the defendants, and made and entered judgment in favor of the plaintiffs in said actions, for the face of the taxes, and apportioned the amounts of the respective sums between the State and the respective counties. The amount of the judgments thus rendered and entered by the Circuit Court was \$140,685 20, being the balance then remaining due and unpaid on the face of the taxes, and was subsequently wholly paid to the Attorney-General of the State by the defendants.

It was also stipulated that test cases should be taken to the Supreme Court of the United States, and that the action of the Circuit Court in rendering the judgments aforesaid for the face of the taxes should, in no way, prejudice the right of the State to recover penalties, interest, and attorneys' fees.

Under and in accordance with the last-named stipulation, three cases were taken by writ of error to the Supreme Court, viz.: Santa Clara County vs. The Southern Pacific Railroad Company, California vs. The Central Pacific Railroad Company, and California vs. The Southern Pacific Railroad Company. In the action by Santa Clara County the amount claimed was \$13,360 15, for the fiscal year 1882. In the other case against the same company, the amount claimed was \$5,029 27, for the fiscal year 1881. In the action against the Central Pacific Railroad Company \$25,950 50 were claimed for the fiscal year 1881. In all the cases judgment was asked for a penalty of 5 per cent, interest at 2 per cent a month, and attorneys' fees. The case was argued and decided at the October term, 1885, of the Supreme Court of the United States. In the opinion the Court says:

"The case as presented to the Court below was therefore one in which the plaintiff sought judgment for the entire tax arising upon the assessment of different kinds of property as a unit. Such assessment included property not legally assessable by the State Board, and a part of the tax assessed against the latter property not being separable from the other part. Upon such an issue the law, we think, is for the defendant. An assessment of that kind is invalid, and will not support an action for the recovery of the entire tax so levied. It results that the Court below might have given judgment in each case for the defendant upon the ground that the assessment, which was the foundation of the action, included property of material value which the State Board was without jurisdiction to assess, and the tax levied upon which cannot, from the records, be separated from that imposed upon other property embraced

in the same assessment. As the judgment can be sustained upon this ground, it is not necessary to consider any other questions raised by the pleadings and the facts found by the Court. It follows that there is no occasion to determine under what circumstances the plaintiffs would be entitled to judgment against a delinquent taxpayer for penalties, interest, or attorneys' fees; for, if the plaintiffs are not entitled to judgment for the taxes arising out of the assessment in question, no liability for penalties, interest, or attorneys' fees could result from a refusal or failure to pay such taxes. Judgment affirmed." (118 U. S. Reports, p. 417.)

As to the liability of companies for penalties, interest, and attorneys' fees, in case of invalid assessment, the point is directly made and decided in the case of San Bernardino County vs. Southern Pacific Railroad, 118 U. S. Reports, p. 417, in which the Court said:

"Of course no penalties for not paying an illegal tax, and no attorneys' fees charged for an attempt to collect them, could be recovered; and for a like reason, the interest of two per cent a month claimed could not be demanded."

That decision disposed of all the cases brought by the respective counties or the State against the Pacific Railroad Companies for the years 1880, 1881, and 1882.

There were also pending, on the twenty-ninth day of September, 1884, in the Circuit Court of the United States for California, six certain other cases prosecuted by the People of the State of California against the railroad corporations for the collection of delinquent taxes for the fiscal year 1883. Each of said cases was originally commenced in one of the Superior Courts of the State by attorneys employed for that purpose by the State Controller, and were subsequently transferred, on motion of the defendants therein, to the Circuit Court, and in that Court, on the twenty-ninth day of September, 1884, an order was made and entered in one of said last-named six cases, that the defendant corporations having tendered in their answers, on the ninth day of November, 1883, and offered to pay the sum of \$333,377 10; that said defendants in their several answers having averred that they had brought the said sum into Court, and offered the same to the plaintiff, and subjected the same to such orders or judgments as the Court might make in the premises; that upon motion of attorneys for plaintiff, it was ordered by the Court that the defendant, within five days from the date of said order, make such tender good, by paying to E. C. Marshall, Attorney-General of the State, the sum of \$333,377 10, to be by said Marshall paid into the State Treasury of California for the benefit of said State and the counties respectively entitled thereto. And it was further ordered that neither the payment nor the receipt of said sum should prejudice or affect any right of either party to maintain or defend as to the balance claimed in the complaint.

The amount thus ordered to be paid by the Circuit Court amounted to 60 per cent of the face of the taxes, and was paid to the Attorney-General by the defendant corporations in the actions within the five days mentioned in the order.

On the sixteenth day of September, 1885, in the Circuit Court of the United States for the State of California, five certain other cases were commenced, removed, and prosecuted as were the six cases last referred to, and in which similar proceedings were had, except that the amount ordered to be paid to the Attorney-General by the respective defendants,

and which was so paid, was the sum of \$329,520 63, and was 50 per cent of the face of the taxes. The Circuit Court rendered judgment for the defendants in all of the cases, and the State took the cases to the Supreme Court.

Nos. 600 and 1157 on the docket of the Supreme Court are the cases in which the tenders were made and accepted by the State for the taxes of 1883 and 1884. (127 U. S. Reports, p. 1.)

The Circuit Court found in cases Nos. 660 and 1157, and others, that an assessment made by the State Board of Equalization for the years 1883 and 1884 included the full value of all the franchises and corporate powers held and exercised by the defendants. Mr. Justice Bradley, speaking for the Court, says:

"Assuming, then, that the Central Pacific Railroad Company has received all the important franchises referred to, by grant of the United States, the question arises whether they are legitimate subjects of taxation by the State. They were granted to the company for national purposes, to subserve national ends. It seems very clear that the State of California can neither take them away, nor destroy, nor prejudice them, nor cripple them by onerous burdens. Can it tax them? It may undoubtedly tax outside, visible property of the company situated within the State. That is a different thing. But may it tax franchises which are a grant of the United States? In our judgment it cannot." (127 U. S. Reports, p. 40.)

In brief, the Court decides that both the Central Pacific and the Southern Pacific held franchises from the Federal Government, which franchises were not subjects of taxation by the State of California.

The opinion concludes as follows:

"It follows in each one of the cases now before us that the assessment made by the State Board of Equalization comprised the value of the franchises, or property which the Board was prohibited by the Constitution of the State and of the United States from including therein, and that these values are so blended with the other items on which the assessment is based that they cannot be separated therefrom. The assessments are therefore void. This renders it unnecessary to express any opinion on the application of the fourteenth amendment, as the result would not be different whatever view we might take of that subject. The judgments in all the cases are affirmed."

As a matter of law, your committee are of the opinion, from the adjudications in these several cases, that as to the taxes of 1880, 1881, and 1882, judgments having been entered for the face of the taxes, and paid, and the Supreme Court of the United States having decided that the assessments were void, the State has no claim for taxes, penalties, interest, or attorneys' fees, either in law or equity, for said years, or any standing upon which to reassess said properties for said years.

Your committee are further of the opinion, as a matter of law, that as to the taxes for 1883 and 1884, suits having been brought, the causes removed to the Circuit Court, and tenders having been made of a part of the amount claimed, by the defendants, those tenders paid into the said Court upon its order, and having been accepted by the State, the judgments in said causes having been rendered in favor of the defendants and against the State, and upon appeal to the Supreme Court of the United States those judgments having been affirmed, the State has now no claim, either in law or equity, for the taxes, penalties, interest,

or attorneys' fees against the defendants for the years 1883 and 1884, or any standing upon which to reassess said properties for said years.

Suits were brought in the Superior Courts of the State by the People of the State, on the relation of the State Controller, against the Central and Southern Pacific Companies to recover the taxes of 1885. The cases were transferred to the United States Circuit Court for the Ninth District, and judgments were rendered therein against the State in all the cases. The judgments in those cases are final, or have been taken to the Supreme Court by writ of error, and affirmed.

That, in the opinion of your committee, to pass a law attempting to reassess said properties and collect the taxes thereon for any period of time prior to the year 1885, would place the State of California in the attitude of being in conflict with the judgments, orders, and decisions of the Courts of the United States, and would result in nothing except extended litigation exceedingly expensive to the State, without adding anything to the revenues of the State.

Your committee further find that for the years 1885, 1886, and 1887 the Central and Southern Pacific Companies paid nothing on account of State and county taxes assessed by the State Board of Equalization against them, except \$49,000, the taxes for the three years upon three small railroads of their system, which, as to such roads, was payment in full.

That a suit was brought by the proper authorities in the Superior Court of the City and County of San Francisco, for the taxes claimed to be due from such companies for the year 1886. The case was appealed to the Supreme Court, and that Court held that the scheme for the assessment, levy, and collection of taxes on roads situated in more than one county, prescribed by sections three thousand six hundred and sixty-five to three thousand six hundred and seventy, inclusive, of the Political Code, was unconstitutional, as being special legislation, not authorized by section twenty-five of article four of the Constitution.

The Court, speaking by Mr. Justice Fox, said:

"This legislation also provides a mode of collection differing from that found in the general law on the subject; not necessary for the purpose of carrying into effect any of the provisions of article thirteen of the Constitution, and 'special' because not applicable to all property, or even to railroad property generally, but only to such railroad property as is situated or operated in two or more counties. For this reason it is in direct conflict with, and is specially forbidden by, subdivision ten of section twenty-five of article four of the Constitution. It is therefore void, and furnishes no cause of action upon which suit can be maintained under it." (The People vs. Central Pacific Railroad Company, 83 Cal., p. 393.)

The same laws were in force in the years 1885, 1886, and 1887, and still remain, and in the principal respect, declared by said Court to be invalid, have not been altered by subsequent legislation.

That there is, therefore, now no means provided by law for the enforcement of the claim of the State for taxes claimed upon said properties for the year 1885, or any subsequent year.

That, from the evidence before the committee, it appears, that upon the advice of the then Attorney-General and other counsel employed by the State, the assessment of said properties for said three years, as to each of said properties, was an assessment in gross, fixing the value in

a single item for the franchise, roadway, roadbed, rails, and rolling stock of each of said roads.

That, included in said assessment of the Central Pacific Railroad and Southern Pacific Railroad, was an estimated value of the Federal franchise, an element of value, which, as has been before shown, is not subject to taxation. That, therefore, the entire assessment of said railroads for the said three years 1885, 1886, and 1887 is, in the judgment of your committee, invalid and void, and that no tax upon said properties for said years can be collected by law until said properties shall have been reassessed and taxes levied in accordance with the Constitution of the State and of the United States.

That, subsequent to the year 1887, the assessment of said properties did not include an assessment of the Federal franchise, and that since that year all of said properties have paid all the taxes claimed to be due from them for said years. That all the local taxes upon the depots, station grounds, shops, buildings, gravel beds, etc., of the said corporations, amounting to from \$120,000 to \$150,000 per annum, have been fully and promptly paid, as they became due, since the year 1879.

That there are now pending in some of the Superior Courts of this State suits for such taxes, in some instances there being two suits in different localities covering the very same taxes. That, to continue said suits for such taxes for said years, and also to reassess said properties for the same years, would be to involve the State in needless expense in the further conduct of such suits.

It is the opinion of your committee that reassessments should be made for all property upon which assessments have been made and the taxes remain unpaid since the year 1884, in the year 1893, and that, until the delinquency in the payment of the taxes levied on such reassessments, if any, all further proceedings in said suits should be stayed.

The foregoing provisions, in the judgment of your committee, are fully, fairly, and constitutionally provided for in the substitute bill for the reassessment of property herewith submitted and recommended for adoption.

Your committee herewith report, in connection with said substitute bill, all the testimony taken, and recommend that five hundred copies of said testimony, of this report, and of the substitute bill, be printed for the use of the Senate.

CARPENTER,
Chairman Committee on Corporations.

SACRAMENTO, CAL., February, 1893.

IN THE MATTER OF THE

INVESTIGATION OF THE RAILROAD COMMISSIONERS

BEFORE A

Select Committee of the Senate, consisting of Hon. Frank McGowan, Chairman. Members: Senators Goucher, Earl, Ostrom, Mahoney, Seawell, and Seymour.

TESTIMONY.

SACRAMENTO, February 8, 1893.

THE CHAIRMAN: The committee will please come to order. In this proceeding the State Railroad Commissioners have been cited to meet before this committee to show cause. Are they now ready?

MR. REA: We are ready. Mr. Litchfield's family is sick at home, and we have agreed that you hear him first, if there is no objection.

MR. MCGOWAN: Very well. In order that we may thoroughly understand the proceedings before the committee at this time, I will read the Assembly concurrent resolution, and also the Senate resolution. The concurrent resolution, relative to the Railroad Commission, reads as follows:

"Concurrent resolution, relative to investigating the Railroad Commission:

"WHEREAS, There were elected in November, 1890, William Beckman, J. M. Litchfield, and J. W. Rea, as Railroad Commissioners of the State of California, constituting the State Board of Railroad Commissioners; and whereas, it is provided by Section 22, Article XII, of the Constitution of the State California, that the Legislature of the State of California may, by a two-thirds vote of all the members elected to each House, remove any or all such Commissioners from office because of their dereliction of duty, corruption, or incompetency; and whereas, it is the duty of the said Railroad Commissioners, namely: William Beckman, J. M. Litchfield, and J. W. Rea, and has been their duty ever since their said election to such office, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies; and whereas, the said Railroad Commissioners have utterly failed and neglected to establish such rates of charges for transportation of passengers and freight by railroads, and other transportation companies, and have been and are guilty of dereliction of duty and incompetency; now, therefore, be it

"Resolved by the Assembly of the State of California, the Senate concurring, That the said William Beckman, J. M. Litchfield, and J. W. Rea, Railroad Commissioners, as aforesaid, be and they are hereby removed from said office of Railroad Commissioners, and the said offices are hereby, each and every one of them, declared to be and are vacant."

MR. MCGOWAN: I will now read the resolution passed by the Senate.

"WHEREAS, There is now pending before this body Assembly Concurrent Resolution No. 7, relative to investigating the Railroad Commission; and whereas, the said resolution is set for hearing before this body as special order for Monday, February 6, 1893; now, therefore, be it

"Resolved, That the citation of this body in due form of law issue herein, directed to the persons named in the said resolution, as Railroad Commissioners, to be and appear before a special committee of seven

members of the Senate, to be appointed on Monday, February 6, 1893, immediately after the reading of the Journal, and show cause, if any they have, why they, and each of them, should not be removed from said office of State Railroad Commissioners, for the reason and upon the ground set forth in said resolution as amended."

MR. MCGOWAN: These are the proceedings this committee will act upon, and the committee will rule now that the order of business shall be that the Railroad Commissioners shall each be called upon to show cause upon those grounds why they should not be removed from office. Mr. Litchfield will take the stand.

TESTIMONY OF MR. J. M. LITCHFIELD.

SWORN.

THE CHAIRMAN: Now, Mr. Litchfield, do you desire to make a statement or do you wish the committee to ask you questions?

THE WITNESS: I think it would be better for me to go on and make a statement myself. I came away from home and left my notes, which I had intended to speak from. Well, I will start in by saying that soon after being elected Railroad Commissioner I obtained the rate-sheets of all the railroads in the State. I commenced an examination upon them; gave them a great deal of study, and when the Board met—after they had met and organized, I made this statement to them: That if we attempted to take the rate-sheets and make a revised rate from beginning to end, through and through, and make what we ought to make—an equitable rate—I mean by that an equitable rate between the shippers and the carriers—that in all probability before we would arrive at a conclusion our term of office would have expired, and I thought we could accomplish a great deal more by simply doing one thing at a time. Take up one matter at a time and rectify whatever wrong we might find in that way. The Commissioners as a whole decided that that was the better course. We then decided that we would take up the cases that had been left over from the old Board, and that we would further invite the public to come forward with all the disputes, both from the country and the city, and to make any complaints as to rates of fare and freight—that they might do so, thereby giving us some point to work upon. The first case of any importance that was before us was the Porterville case. That was a case left over from the old Board, and we visited the town of Porterville, and listened to the evidence and granted the compliance—I don't know that we granted all that they asked—but we granted a great deal. One man wanted a sidetrack built, which of course was not within our jurisdiction, but we obtained it for him, however.

We then decided to make a reduction of rates in some cases. They wanted the same rates on the Porterville branch that was then in force on the main line; but before granting that request we made a reduction on the main line of something—my recollection is now that the reduction on live stock was 6 per cent, and from that to 41 per cent on wood. The record will show what those reductions were. We then made the same rate for the Porterville branch, notwithstanding the railroad company showed a loss of over \$70,000 on that branch the last year previous to the reduction.

MR. SEAWELL: Did you reduce the rates? A. Yes, sir; on the main line. They didn't ask us to reduce the main line rates, but we did reduce

the rates on the main line from about 5½ on live stock to over 41 per cent reduction on wood. There is the record. We then made the same rates for the Porterville branch as the new rates that we had established on the main line, giving the people on the Porterville branch the same rates that they had on the main line. I was about to say that Mr. Stubbs, Mr. Smurr, and Mr. Gray personally appealed to me very strong, and said it was unjust—"We have lost so much money, and these rates we cannot stand." My language was to them, "You can stand a little injustice in this case, because eventually, if the country builds up, you will come out all right." I said, "These people cannot live and make money, and unless they can live and make money the country won't build up."

So we put the resolution through—the resolution through the Board, and I understood afterwards that they carried it out—our rates. The people of Porterville, as I understood afterwards, were much gratified and I said to the Commissioners, "Now, this will demonstrate to us that we can do a great deal of good by taking up these things one at a time, and going to the people and see what complaints they have to make." I says, "It is impossible for us to state where and which articles are too high. For instance, the rate on glass. We read it in the books—in the rate-sheets—but how do we know the rate is too high unless the shipper will say so." So I suggested that we go before the people and advertise our meetings and ask the people to come up with their complaints. In the meantime, before that, a resolution was passed before the Board that we meet every Monday, so that people could know that we were to be there, and come forward with their complaints. On the strength of my suggestion a resolution was passed through the Board that we visit the southern part of the State, and the Secretary was advised to advertise that we would meet in Los Angeles, on such a day, and ask the people to come forward with their complaints; and we would meet in San Diego, Pasadena, Riverside, and all the towns of importance, and ask the people to come forward with any complaints they might have with regard to rates. We took that trip, and so far as I am concerned, I took it with the best of motives—the best in my life, so far as I am concerned—for the purpose of serving my employers and performing my duty.

The people didn't come forward with complaints as we anticipated, but we did settle a case in Pasadena, and that was satisfactory to all parties. The case in Pasadena was a complaint on the excursion rate over which we had no control, or rather commutation, but we simply informed Judge Brunson, who was representing the railroad, that if they didn't make those commutation rates satisfactory, or what we deemed would be right and proper, we would reduce the local rates so low that the people would not need to buy commutation, and in that way it was satisfactory. It had been published in the "Daily Report," which paper came out and said, "The people have won at last," but they didn't give us credit for forcing the issue. We then followed that line up, and every case that came before us we gave consideration. There was a case in Placerville in regard to rates on wood and also live stock. We went up there and heard the evidence, and on the way to the depot the gentleman that made the greatest complaint about wood said to me, "Make a reduction on wood rates," and I told him I would have to make that reduction on other lines so as to have them adjusted,

if they were reduced on that particular line, and he said, "No, do not do that—don't reduce them on the other lines." "Well," I said, "we cannot do that because the rates are carefully adjusted, and if we do that for you we will have to do it for the others, and all around." "Well," he says, "you can give us \$1 or \$1 50 off, and don't reduce it on the other lines."

Well, we made no reduction on wood, but we made a reduction of 36 per cent on live stock. We had a great many complaints come to the Board without being filed and sworn to; but every complaint that has ever been filed before our Board, either as a communication or verbal complaint—that has been made to me individually—has been looked into, and either compromised satisfactorily to the complainant or put through the Board as a resolution granting what we deemed proper. We were getting along, in my estimation, gentlemen, well, and so that we were doing very good service I thought, and I think so now, and if let alone we would accomplish more than any Railroad Commission ever has.

Some six or seven months after I had been on the Board I met the reporter of the "Daily Evening Report" on Sansome Street, who, by the way, I considered a very bright young man—I think he is one of the brightest railroad reporters we have—and he said to me with his own free will—he says, "Litchfield, you have accomplished more in six months than the Railroad Commission has accomplished in its existence, and I have been to every meeting they held since they first organized."

I still felt from that that we had better follow up the same line, and we kept it up. In the meantime, the Traffic Association was formed, and Mr. Leeds came out here, and a certain day after he arrived here Mr. Stetson, the President of the association, brought him to my store and introduced him to me. I felt very grateful to Mr. Stetson for it, because I believed he did it for the purpose of helping me out in getting information which I, as a non-railroad man, would not be able to discover. And I supposed he was doing it for the purpose also of getting a reduction of rates through the Railroad Commission; I believed that was his object. I invited Mr. Leeds, after giving him a copy of the law, to come and visit our Board, and he said that he would like to visit the Board of Railroad Commissioners, and I says, "You have that right, Mr. Leeds; that is your right, and you are perfectly welcome." "Well," he says, "I don't know where you meet?" I says, "We meet every Monday in rooms 27 and 28 of the Chronicle building, and when we have special meetings you will be notified just as much as any of us." And I went to the Secretary, and I says, "Mr. Kelly, I wish you would inform Mr. Leeds of every meeting, as he wishes to attend them." I says, "Mr. Leeds, you are familiar with rates, and more particularly transcontinental rates, and the rate-sheets—particularly in California—was a great big complex complication to me. I have given it a good deal of study, and I promise you in looking over the rates you will discover something that will be deemed to be wrong, and which you can point out—things that I could not see—and I wish you would be kind enough to point them out to me, and if there is anything wrong in them I will go before the Board, and I assure you I will have them righted, because I believe the other two Commissioners, when I satisfy them that it is wrong, they will stay with me—stand by me."

I said, "Mr. Leeds, if you don't care to have anything said about this, I will give you this information—I will give you my word and honor as a man that I will not use your name at all." He said he would be glad to do so. I thought I would cultivate Mr. Leeds for the purpose of gaining information, and I presumed he would be willing and glad to give me that information which I could not find myself. If any of you people think it is an easy thing to go through a rate-sheet—a book that thick [indicating]—and find out every little thing that might be wrong in it, it will surprise you by finding how difficult it is. Now, I want to say right here, I tried to cultivate Mr. Leeds for the purpose of getting that information from Mr. Leeds. Well, the report got around that I was coaching Mr. Leeds. However, it didn't mean anything, because Mr. Leeds never gave me any information at all, but the very first communication he sent to the Board was an insulting one, and the Commissioners said so. I said, "Mr. Leeds represents my constituents and not yours, and besides they are merchants of San Francisco, and they are first-class men, and I don't believe that they intended that this communication should be an insult, and I doubt if Mr. Leeds intended that it should be." So we received the letter. I made the motion that we receive it and place it on file for the information of the Board. The next communication was even more insulting, and the Commissioners objected to it, but we took the same course. The next one was also insulting, and then I came to the conclusion, as well as the other Commissioners, that Mr. Leeds was not endeavoring to get a reduction of rates—that he had made up his mind, and that it was to get a disagreement between the Traffic Association and this Commission; and I for one said: "I will not stand by;" so I refused to receive that insulting communication. The evidence shows, all through, in my mind, and I believe if anybody will follow it up, that that is the conclusion that would be arrived at.

Mr. Leeds has never come before us to give us any information that we asked him for, publicly and privately, and he only endeavored to get up a contest for either personal or political motives.

After that, or about that time, came the so-called Sneath complaint. He came with a complaint from San Francisco. Now, I wish to say here that in all those contests the railroad company—we will take, for instance, an ice-shipping point, where there is a great deal of ice shipped and they adjust those rates—we will say, if you wish, that they want to get what the traffic will bear, and they do it to build up the trade, and they had so adjusted the rate from Truckee, but never had made a rate from San Francisco. They simply called one fourth-class rate, and the balance of the road had a third-class, which made it very high in proportion to the Truckee rate. In due time Mr. Sneath came before us, and I asked him personally, "Mr. Sneath, what do you desire?" and he says, "I want the same rates from San Francisco that they have from Truckee."

SENATOR EARL: To what point—Stockton? A. No; I want the same rates from San Francisco.

Q. To what point? A. To all points in the State.

Q. To all points in the State? A. In the State; yes, sir. And I says, "Is that all you want?" "Yes," he says. And I says, "Will that be satisfactory, Mr. Sneath?" and he says, "Yes." I had been working on the rate-sheets for a long time—and, by the way, gentlemen, I am

accused here of dereliction of duty, and I have worked in my house up until twelve and one o'clock, night after night, on these rate-sheets, and if that constitutes dereliction of duty, I have been derelict in my duty, otherwise I am not.

I said to Mr. Sneath, "Mr. Sneath, from your reputation—in a pleasant way I said it—"I think you will be hard to satisfy, but I believe, however, that this Board will please you."

I had been working, as I say, for a long time on the sheets. I had learned that the railroad company had made a further reduction from Truckee, and I went down to see Mr. Stubbs or Mr. Smurr, and demanded a reduction of those rates, and I made the same reduction—the same rates from San Francisco to every point in the State that was established from Truckee, except from San Francisco out as far as Stockton, which of course gave Mr. Sneath a great deal the best of it. I introduced those sheets then to the Board, and we decided to put them through. We passed them and notified the railroad company to put them in force. As soon as they had been passed, there was some six or seven large sheets of paper, some six or eight columns in size, and Mr. Sneath and Mr. Leeds grabbed them all but one and went into the other room, and the reporters asked if they could not have some of them to look over, and I went to Mr. Leeds and Mr. Sneath and said, "Won't you allow the reporters to look over four or five of these; and then you can exchange with them." He appeared to be very dignified to think that I should ask him for those sheets of paper. I am not exaggerating one bit, gentlemen. I left the office and the next day, lo, and behold! Mr. Litchfield had been accused by Mr. Sneath of making an established rate in the interest of the railroad company, and that I had reduced the rates in the San Joaquin Valley a large per cent where he never shipped any ice to, and had raised them in Santa Cruz and San José, where he shipped the most of his ice. That statement was made, for I went to people who were in the office after I left, and they all stated that Mr. Sneath made that assertion.

Now, right here in Mr. Sneath's evidence, he dwelt more particularly on Bakersfield and Fresno than any other point; the rates were so high there that it excluded his shipment. Mr. Sneath was compelled to pay \$20 20 to Bakersfield, and they were reduced to \$5, and from \$5 to \$4 to Fresno. At any rate, the rates were reduced about 50 per cent; and at the next meeting of the Board Mr. Sneath came before the Board with a rate-sheet of his own. He was not satisfied with this one, that he said he would be satisfied with, and he wanted the same rates, similar rates to what they have in the northern part of Iowa, where they ship ice, and Mr. Leeds told him, he told Mr. Sneath: "Your comparisons are not fair or just; your complaint is not fair or just." That was before Mr. Sneath joined the Traffic Association. A few days after that Mr. Sneath joined the Traffic Association, and then they were perfectly fair in Mr. Leeds' estimation. I asked Mr. Sneath if he made this statement that was printed in the paper, and he said he was not responsible for anything that appeared in the papers. Well, I told him that every paper seemed to make the same statement, and that everybody in the office understood it. I said to him: "Mr. Sneath, I have tried my best to please you, and I expected when I introduced this rate-sheet that you would shake me by the hand and thank me for standing by you as I have in this case, but you have maligned me and told falsehoods about

me." I produced his own complaint, and I said, "Are these your figures—2, 2, 0?" and he said: "Yes, 2, 2, 0." I says, "There are my figures, 1, 5, 0—1.50. Will you be kind enough to tell me if that is raising your rate?" Mind you, this was published to the world that I raised the rates to San José, where he was shipping a great deal to. I then turned to the Chairman, after bringing up the other case, and said: "Mr. Chairman, in the future I will not have any confidence in what he will say, whether under oath or otherwise. I move to adjourn." Mr. Leeds seemed to take up the battle for Mr. Sneath, but I think it was settled, and we left it at that, so we followed up the other case. The Santa Cruz case was some time being tried, and my opinion in the annual report will give my reasons for the decision in that case. I think they are plain and honest.

In every case that was before the Board, I wrote my report without consulting with the other members of the Board, and if they agreed with me, all well and good. As a general thing, we all agreed, and I followed up that course ever since. The last year we have been pretty busy looking into Mr. Leeds' complaints. Now, I wish to say here that not long ago I was reading James G. Blaine's speeches, and he was comparing two diplomats, and he says, "There is one individual who lies, and always deceives; the other individual lies, but never deceives." Now, I wish to say that Mr. Leeds does not fill the bill to either one of those positions, because when he thinks a lie will stab more deeply or more severely, he will use the lie, and when he thinks deception will have more effect, he will use deception, and I will prove it to you in two minutes by making just one assertion.

SENATOR MCGOWAN: Well, I don't know as that is relevant testimony. Mr. Leeds is not on trial here.

THE WITNESS: He is the man who was the instigator of this complaint, though.

SENATOR MCGOWAN: I don't think it is proper testimony.

SENATOR SEAWEL: I will say that if that is the basis of any further statement, I think it would be relevant; if he does that simply to assault the character of Mr. Leeds, why of course it would be irrelevant, but if he is going to use the substance of the statement here as the basis of the statement showing that public sentiment has been claimed and deceived by this man, I don't think it would be entirely relevant—would it?

SENATOR MCGOWAN: Not if it is to be the basis of the action of the Board.

THE WITNESS: I wish to show you the character of his complaint before the public.

SENATOR MCGOWAN: We are not dealing with these complaints.

THE WITNESS: Will the Chairman inform me whose complaint we are here meeting.

SENATOR MCGOWAN: Yes; it is the resolution of the Assembly charging the Commissioners with dereliction of duty and incompetency in office.

THE WITNESS: Will the Chairman inform me why the resolution was offered—if there are any insinuations?

SENATOR MCGOWAN: It is charged in that resolution that the Commissioners are derelict in their duty, and also for incompetency.

THE WITNESS: The resolution as passed by the Assembly?

SENATOR MCGOWAN: Yes; and in the Senate resolution, also. The

Railroad Commissioners are called upon to show cause why they should not be removed from office.

THE WITNESS: I would like to ask if Mr. Leeds was before this committee?

SENATOR MCGOWAN: No, sir; never.

THE WITNESS: He went before the committee in the Assembly and said that we were derelict in our duty, and I met Mr. Leeds and asked him, afterwards, if he made that statement, and he declined to answer.

SENATOR MCGOWAN: Well, we never knew anything about that. If you want to illustrate any action of the Board that is admissible evidence here, you may do so.

THE WITNESS: Well, I will go on, and I wish to prove what I say. I will make it very short, and use only two or three instances, and I believe Mr. Beckman has the statistics to show the character of those complaints. He filed a complaint before our Board, making a comparison of rate for nine miles in California with nine miles in Missouri, or Kansas, I forget which, as I have not my minutes with me, when, in fact, the nine miles in California were thirty-six miles, against the nine miles in Missouri. He filed a complaint, also, for a comparison of rates, also, for twelve miles in California against twelve miles in Missouri, when, in fact, the twelve miles in California were thirty-four miles that the freight was hauled. Now, I can go further, but that will do to illustrate. Now, when we come to deception, he filed a complaint in California, giving the rate from Selby's Smelting Works to Port Costa, four miles. The complaint was drawn, but it was deceptive. It was known that nobody ever ships a pound of wheat from Selby's Smelting Works to Port Costa. If it was a shipping point, the rate would be justifiable, perhaps. I made a little memoranda of a few things to-day that I may possibly think of later.

SENATOR OSTROM: I would like to ask, Mr. Litchfield, if this is the table that Mr. Leeds filed? (Showing). A. I would have to go to the records to find out. I presume it is, though.

Q. That is in the annual report? A. Yes, sir; it is very likely. I could not tell until I could go and verify it. It would take some time to verify it. I will state that I tramped up and down Battery Street, Front Street, and Davis Street, and the principal business streets of San Francisco, soon after I was in the Board, and kept it up for six months or more, asking the merchants if they had any complaints to make on rates or fares. My friends went to them confidentially and personally, and in one case a gentleman made a complaint to me three or four days ago about the rates on glass. I said to him: "I came to you three or four years ago, and you said it was the Transcontinental rates that ought to be lowered altogether," and I said to him, "How do you expect me to know that your rates are not fair if you won't state it when I come to you."

Now, in regard to this making uniform rates throughout the State, I said, "Mr. Leeds, where would you recommend that we make these rates; do you wish uniform rates for all the railroads in the State?" and I believe it was Mr. Beckman who made the remark that "that would freeze out all the little railroads in the State—these railroads that were built by individuals without expectation of profit—it would freeze them all out," and Mr. Leeds' reply was to "freeze them out," and that is why we differed from Mr. Leeds. If he wanted to get at the Southern Pacific

Railroad, and wanted to punish all the others, why, we wouldn't agree with him.

In another case, Mr. Leeds recommended that we make a rate for the valleys, and let the mountains and deserts look out for themselves. Well, I don't believe there is any honest man in the world would think of doing such a thing as that. If you did, the railroads could not run. My conscience or my convictions would not allow me to do it. It has been published in the papers that our Board assumed that we had no right to fix rates without a complaint being filed. I don't so understand it. We stated to Mr. Leeds that the Constitution—which we can read as well as he—under the Constitution it gives us absolute power to fix rates, and under the Constitution of this State those rates must be official. But as you all know, the Courts of the land decided that we could not fix rates arbitrarily and without a hearing. When Mr. Leeds came to us we asked him to make an affidavit and thereby make a judicial hearing that would give us power to subpoena witnesses and bring them into Court, and any decision that we arrived at would, in all probability, hold.

Mr. Leeds insisted that we make the rates without any complaint, and if the railroad would not enforce them to have the Attorney-General compel them. I said that if we commenced to pool the rates and the Attorney-General should compel them to be put in force, that under such circumstances I believed that it would be thrown out of Court as soon as the evidence was put in. It was a few days after that when the Texas Courts sustained our opinion in that. Now, certainly, we ought not to be condemned for carrying out what our convictions were, and we have as yet been sustained.

SENATOR MCGOWAN: What is the decision? A. That is the decision of the United States Circuit Judge of Texas in the case of the Railway Commission—they undertook to make a schedule without giving a judicial hearing. The United States Court enjoined them from even sending communications to railroads, and it was published and commented on.

SENATOR MCGOWAN: Wasn't that a case wherein there was no hearing at all. A. No; the Judge criticised their attempt to make a purported judicial hearing—that is, in order to make it appear there was a judicial hearing. They simply notified the railroad companies that they would fix rates on such a day, and they proceeded to fix the rates without any evidence as to equity. Well, Mr. Leeds wanted us to do that and to refuse to let them come before us.

SENATOR MCGOWAN: That is the same principle that was announced in the Spring Valley case.

Q. Proceed without any evidence whatever, arbitrarily? A. Yes, sir; and that is what Mr. Leeds wanted us to do, but we declined to do it.

SENATOR SEAWELL: Well, the Spring Valley case was more on taking of property away without due process of law—they didn't allow the company's rates to pay the interest on the debt? A. They simply made the rates without giving the company a judicial hearing.

Q. I am asking about the Spring Valley case? A. Well, it is the same thing.

Q. Without regard to equity? A. Yes; they wouldn't give them a chance to make a defense.

SENATOR SEAWELL: Well, I understand the Spring Valley case was

decided on this ground: That the showing was made there in equity that interest was worth so much, that the bonded indebtedness was so much, and that the rate—water rates—would pay the debts on the interest and bonds, and give the shareholders a reasonable percentage.

SENATOR MCGOWAN: That is the argument in the Minnesota case; in the Supreme Court it was held that in a case of that kind it is not regulation, but confiscation, and the Boards would not be sustained in that action.

THE WITNESS: Now, gentlemen, I see that you have charged in addition in the resolution—you have an additional charge of incompetency. I don't know what has induced the committee to add that additional charge, unless we may have been accused of having something to do with the fact that Mr. Leeds has endeavored to put this mass of figures into the Constitution of this State. If this Commission has been charged with even approving of that, then I don't blame you for presenting charges of incompetency, because I say, and it has never been contradicted by as great a railroad expert as Mr. Leeds, that if his proposition was carried out that it would ruin every small road in the State, and the small roads were built, not on the expectation of making money out of them, but to help and assist the villages through which they passed.

Q. How many small roads are there in this State? A. There are twenty-seven or twenty-eight; I don't know. As far as incompetency is concerned, I don't profess, and never have—I am speaking now for myself—to be a great railroad expert, but I will just say this much; the difference between a Traffic Manager and a Railroad Commissioner is, in my mind—this, and I will take Mr. Leeds' evidence before the Railroad Commissioners, if you desire, for Mr. Leeds testified that as Traffic Manager he was not able to figure the cost of carrying a ton of freight a mile, or of figuring a carload—that as Traffic Manager he was notified of the maximum price for which freight must be carried, and he must not carry anything less than that price, and he must get all that he could above it; but my understanding is that the Railroad Commission does not act on that line—that our business is to fix an equitable rate—not all the traffic will bear, but we must see that the railroad company will get a fair rate.

Now, the question has come up as to the cost of the roads, etc. There are all sorts of assertions made through the papers that the railroad company made all this money, but the fact remains before the Railroad Commission that there is so much money outstanding—bonds against this railroad, on which the interest must be paid or it will go into the hands of a receiver—and I ask you gentlemen how much it would benefit this State to have the railroads go into the hands of a receiver—how long it would be before you would get more railroads in this State? But that fact remains that the interest must be paid on those bonds. Then, it is a question of opinion whether we could throw the railroad into the hands of a receiver, and I don't think it would be well. I have just as good an opinion, and am entitled to it just as much as Mr. Leeds.

As to the question of costs of the railroads, you all know that Congress passed a law authorizing the President to appoint three Commissioners to investigate as to the cost of these roads. They had unlimited

power with unlimited capital, and they spent about two years' time in the investigation, and they never found out anything.

Now, how can you expect us to find out all this? Is it possible for us to tell you how much it would take to build a railroad to Salt Lake City, for instance? If it is, I think the standard is too high.

Now, I can simply say this for myself: that I started out in life at thirteen years of age to paddle my own canoe; and I told my good old Christian father and mother that I never would do anything to disgrace their good name, and I never have. I have never been discharged from a position in my life for any cause, except two cases in the army, and then I was discharged after serving my time, and then they were honorable discharges. One was for nine months. And I was discharged when General Grant concluded to give up business, and I have the honorable discharge. Those are the only cases I have ever been discharged. And now here is a man who has been discharged from his position, and comes out here and asks you to legislate me out of office, and to do it without a hearing.

SENATOR MCGOWAN (interrupting): Never mind about that.

THE WITNESS: I can prove by my good wife that I have worked up to twelve and one o'clock at night. I can prove that. I have here with me a letter—I have it in my pocket, and I think I will introduce it in evidence—to show you, gentlemen, that the Board does something. I will leave this letter here and introduce it in evidence.

MR. MCGOWAN: We will receive the letter.

“OROVILLE, May 20, '92.

“FRIEND LITCHFIELD: I received your very satisfactory note and contents some days ago.

“Our townsmen, and the people generally of the county, I can assure you, highly appreciate your action in their behalf. You know, as I do, that it was an act of justice, and they admire the quiet manner in which you set the matter right.

“Of course nothing is here known outside of your disinterested action.

“Very truly yours,

“C. F. LOTT.”

[Letter received in evidence and marked “Exhibit A”.]

THE WITNESS: Judge Lott of Oroville—well, I will go back, first. Soon after the Southern Pacific got possession of Rideout's road, the people wanted a reduction of rates. There was no official complaint, but a verbal complaint, and the question was left to Mr. Beckman. They decided that they wouldn't ask for a reduction of rates; so the railroad company put on two trains, and there was no request for reduction. About a year after that Judge Lott came into my store and complained of the rate from Marysville in a casual way, and I said I would look into it; so I went down to Mr. Goodman, and he says, “Why didn't they complain of the rates when Rideout owned the road?” and I said, “Well, you know Rideout is their neighbor and friend.” “But,” I said, “that is no matter, anyhow, if the rate is too high.” So I went back to the Board and the Board unanimously reduced the rate from \$5 50 to \$4 50 from Oroville.

Q. Without any evidence? A. Yes, sir; I was satisfied myself that it ought to be done. But if that had been a general reduction all along the line—that it was going to hurt the railroad so bad that they would

fight it, I think they would not have put it into execution—put the rate into execution. Consequently, I thought we could accomplish a great deal more to go around and take up one thing at a time and straighten it out wherever we would hear complaints. Now, that is all I wish to say about this.

Q. I understood you to say that your business is not that of a railroad man? A. No, sir.

Q. How long have you resided in the State of California? A. Since the 3d day of December, 1868.

Q. You never were engaged in any railroading business, were you? A. No, sir.

Q. And knew nothing about the transportation question when you were elected to office? A. Only what I got by casual study—studying the question.

Q. You never claimed to have any intimate knowledge of railroading? A. No, sir.

Q. And don't claim now to have? A. Yes, I do. I claim to know more about the equities of railroads than Mr. Leeds.

Q. Do you claim to be an expert on the subject? A. No; because it takes more than two years' study for that. I don't make no such claim as that.

Q. Do you claim to be familiar with the subject of railroading? A. Somewhat.

Q. More than the average? A. More than the average man that gives it no study.

Q. More than the average man that gives it no study? A. Yes, sir.

Q. You mentioned something about the Placerville case. Did you make any reduction in that case? A. Yes, sir.

Q. What was the reduction? A. About 36 per cent.

Q. On wood? A. No; no reduction at all on wood.

Q. Made no reduction at all? A. Yes; the Placerville case was both for wood and live stock.

Q. Did you make any reduction on anything? A. Yes, sir; on the live stock, about 36 per cent.

Q. And nothing upon wood? A. No, sir.

Q. Was that action taken upon a verified complaint? A. Yes, sir; and the man that made the complaint stayed away from the investigation, but we took the testimony, and listened to whatever we could get, and the verdict is there in the record for you.

Q. Did you decline to make any reduction upon wood rates simply because he didn't appear? A. We didn't decline. I won't say, but I think he was the man that filed the rate on wood. On the way from the hotel to where we held the meeting, from the depot, I said to him, "If we make a reduction on wood for you we will have to make the reduction for all the other people all along;" and he says, "That ain't what we want. We don't want a general reduction."

Q. Well, because he said he didn't want a general reduction, you just continued the usual rate? A. I said that "We cannot do that;" and he says, "Can't you give us a reduction of a dollar here and keep it up with the others—not reduce it any place else?" and I says, "No, sir; I believe the rates are adjusted very good here," and I said, "If we do that for you, we will have to do it for all the others."

Q. Was it because he said he didn't want it reduced on the others that you made no reduction? A. No, sir.

Q. Why then? A. Because I thought they were very reasonable.

Q. Did you hear any evidence on the wood rates? A. Yes, sir.

Q. Before the Commission? A. Yes, sir.

Q. You did hear evidence? A. Yes, sir.

Q. And at that time? A. Yes, sir; and held court, and called the officials in.

Q. And witnesses testified upon those rates? A. Yes, sir; and we had their testimony.

Q. You have their testimony? A. Yes, sir.

Q. And because you were convinced that they were fair, that is the reason why you declined to reduce them? A. Yes, sir; that was my judgment.

Q. Now, you mentioned the Pasadena case. Did you make any reduction there? A. No; that was settled by compromise. The Pasadena complaint was on rates that we had no authority over—commutation rates; and we have no control over it, or at least Judge Brunson argued that we had no control in the matter.

Q. Why? A. The Constitution don't give it to us.

Q. Don't give it to you? A. No, sir; but after we got out of the Court we said to Judge Brunson, "Now, if you don't settle this case satisfactorily, in regard to these commutation rates, we will make the regular rates so low that the people won't want commutation rates. If you are disposed to stand upon your dignity, because we have no power in this matter, and do what you partially admit is unjust, then we will protect the people by making the regular rates so low that they won't want commutation rates."

Q. And rather intimidated the railroad company in that way? A. We wanted them to understand that we wanted them to do what was right, and we would be satisfied. And the people wrote up and said they were satisfied. We were addressed on the subject afterwards, asking for a raise in the local rates—to get permission to make a higher rate; and the people down there—the City Council—recommended it, and we gave them the permission.

Q. Now, you told us about going through San Francisco and asking merchants to come before your Board with complaints if they had any to make? A. I asked them, if they had any, to come before me and point them out.

Q. Those were your constituents? A. Yes, sir.

Q. Merchants who get their freight over the lines from the East? A. Yes, sir.

Q. And a matter that you have no control over? A. I went to them and asked them if they had any complaints about the local freight.

Q. Well, you know as a fact that those merchants get the trans-continental rate; you knew that, that they got those rates? A. Yes, sir.

Q. Did you ask any farmers? A. We advertised to the world, and have asked farmers. I will tell you one farmer—I cannot call his name, but he is President of the Merced Savings Bank—

MR. SEAWELL (interrupting): He is a gold-bug now? A. Well, he started in as a farmer, and I asked him if he had any complaints to make about the rates down there. "Well," he says, "Litchfield, the rate is \$2 50 to Port Costa, and I would like to get it down to \$2; in fact, I

would like to get it down to \$1 50, and it would please me better if they would carry it for nothing. It made me rich, and I am President of a bank now."

Q. Who was that? A. The President of the Merced Bank. I have asked a great many people. I have made it a point to straighten out those things, and mind you, this letter here is but one of the many we have. I can bring you an editorial that I have understood was written, giving me about a column or more, in San Mateo County, where it said they had got what they were fighting for for years, and this was—

MR. MCGOWAN (interrupting): Now, when Sneath made this complaint upon ice rates, you heard that there was some reduction made— A. (Interrupting.) That was after.

Q. Some time after? A. Yes; two or three months.

Q. And you went to the railroad company and found out what the reduction was? A. Yes, sir.

Q. And it was an equitable reduction, as you understood it. A. Yes, sir.

Q. Some time after that the Board did pass an order reducing the ice rate? A. Yes; reduced it from seventy-five to eighty. In other words, we established an ice rate from San Francisco to all parts.

Q. Except Stockton? A. Every place in the State.

Q. And you gave those reduced rates to Mr. Sneath? A. Yes, sir.

Q. Were those reduced rates that you gave to Mr. Sneath any other than what the railroad company had given you? A. Certainly.

Q. I thought you said they had reduced rates— A. (Interrupting.) That was from Truckee. Mind you the Truckee Company shipped over six thousand carloads last year, consequently the railroad company had adjusted the rate in order to build up that ice business. They made the rates what they claimed to be very low, and Mr. Sneath, who manufactures ice in San Francisco, he shipped forty-three carloads last year.

MR. MAHONEY: So you made the rates uniform? A. Yes, sir. Mr. Sneath said, "I cannot compete with these people unless you give me the same rates," and that is all that he asked for.

Q. Was the rate on the ice from San Francisco to Truckee a rate per mile? A. No; so much from station to station. My recollection now is it was \$12 80—it was \$4 from Truckee to Fresno, and from San Francisco to Fresno it was \$12 80, and from Truckee to Bakersfield it was \$5. I remember that, because that was the point that Mr. Sneath dwelt on most, and it was from San Francisco to Bakersfield \$20 20, and it was reduced to \$5. Mr. Leeds was there and he heard all the arguments on it, and still I understand that he came up here and reported that we made no reduction.

MR. MCGOWAN: You understand, I suppose, the requirements of the Constitution, to the effect that there should be no business relations existing between the railroad company and the Railroad Commission? A. I have no business relations with them.

Q. You have no contracts with them? A. I simply made a contract with them before I was elected Commissioner—an agreement that I would make conductors' uniforms—clothes—for the same rate as other people do.

Q. In point of fact, you do make all their uniforms, do you not? A. No, sir; not one quarter of them.

Q. You made some agreement with them before you went into office, did you? A. Yes, sir; providing they would give me a pass over their road, and they held me to that agreement, and it cost me \$600. They came to me the same as to anybody else—the same as they would go to Mr. Poheim. Certainly my relations with the Railroad Commission ought not to prevent me from selling a suit of clothes; and I might say in this connection, that they are the meanest buyers I have to deal with.

MR. OSTROM: Mr. Litchfield, you have gone around the country somewhat. Have you ever interviewed any farmers? A. I remember distinctly, I interviewed a great many, and some people—members of the Board of Trade in San Diego, and some in Los Angeles and Riverside, when we went down there, and I have in mind this gentleman whom I have spoken of, but whose name I have forgotten—the gentleman at Merced. I met him on the street; that is why I remember so distinctly, and it was not long ago.

Q. Do you remember any interview with any persons at Reed's Station? A. Yes; at Marysville.

Q. Did you ever have an interview at Gridley with any one? A. Yes, sir.

Q. At Germantown? A. No, sir.

Q. Ever at Lincoln? A. No, sir.

MR. OSTROM: That is all.

THE WITNESS: I would like for you gentlemen to ask me any questions that you think of, for, as I say, I came away without my notes. I had some statistics to offer, but I believe Mr. Beckman has some statistics here with him.

MR. MAHONEY: Those men you interviewed in San Francisco—was it for the purpose of helping them out? A. Yes, sir. For instance, you take up the railroad sheets and you see that the rates are so much, but you don't know whether it is too high or too low, and the only way is to go to the men who ship the stuff and find out from them, because they must charge more on one piece of goods than on another, according to what it is. You all understand that, and they must govern their freight rates accordingly. I had a long interview, and went down to the railroad office three or four times, on a question of salt rates.

Q. Did you ever reduce those rates? A. I had a verbal complaint on salt business. A gentleman in San Francisco complained because the railroad carried salt too cheap from Salton to Marysville, and up this way, and he claimed that they were ruining his business; so I went to Mr. Smurr, and his explanation of it was that they bring that freight at cost. "There is not over six tenths of 1 per cent profit on it, but our object is to build up the industry, and we will then have the shipping of goods down there, when it is built." But the salt men in San Francisco complained because they shipped the salt at the same rate that they did from San Francisco, thereby giving them the same opportunities, and the salt people in San Francisco had too much competition, and they didn't like the competition. And I told this gentleman that he had no authority over that. That Marysville was a distributing or terminal point, and these terminal points are all the same. But I believe they settled the thing up with Mr. Hitchcock, making a separate

rate from that to Salton, on salt. We have a great many of those cases that never come before the people, but are fixed up by the fact that we have a little authority.

Q. After reducing the rate on the stock on the Placerville road you never had any other complaints from there? A. No, sir.

Q. All seemed to be satisfactory? A. Yes, sir. But we did ask the railroad—Mr. Beckman and myself—to put in a cattle yard up there for them.

MR. SEAWELL: I see that you employed Col. R. P. Morgan to perform some service for you. What was the necessity for that employment, Mr. Litchfield? A. I will say, Senator Seawell, that when that question was broached to us—the question had been discussed between the Commissioners a great deal—this question of an expert to go over the whole matter. Mr. Rea was very anxious to get an expert, but I demurred for a time. I learned, then, that Mr. Morgan was in town, and I learned that Mr. Rea—I believe it was Mr. Rea—had seen him, or his secretary had seen him, and questioned him upon the subject. I rather hesitated, not on the ground of propriety, but on the ground of policy in this matter. I didn't want any criticism, but I found Mr. Morgan and consulted with him. I looked him straight in the face and said to myself, "He is an honest man, if I am any judge." I saw his credentials, which are second to none. Then we took particular interest to telegraph East to get further information.

So I finally consented to hire Colonel Morgan, and we hired him this way: We said to him, "Colonel, we want to see if we can arrive at something that will justify us in making a horizontal reduction of rates, and what we want is a thorough inspection of the roads and a report entirely impartial, whereby we can be guided, as judges, in regard to what we shall do." The question of compensation came up then, and we told him that we had no appropriation, and consequently we could not pay him, but we believed that the next Legislature would make an appropriation, and we hired him.

I have never done anything in my life that I did with a more conscientious or better motive, and I was very anxious that he should bring in a report that would justify us in making a reduction, and tell us where the proper reduction could be made without injuring the railroad.

Q. Do you know the facts as stated in his report? A. Yes, sir.

Q. Have you made any investigation personally as to the matters embraced in his report? A. Not in regard to that report. The report simply conforms with my judgment beforehand—what it was before—and I regretted that it did conform with my judgment. I was in hopes it would be the other way. But that report is now before us for a judicial decision.

MR. SEAWELL: That is all.

MR. MCGOWAN: That is all.

TESTIMONY OF JAMES W. REA.

Sworn.

MR. MCGOWAN: Do you wish to proceed, Mr. Rea—as the last witness—make a statement, or do you wish to be asked questions? A. I was going to state that I had been Railroad Commissioner six years, and here are the reports for each year, and I have no excuse to make or

apologies to offer for my course. I am here to explain my course, and I thank you gentlemen for the opportunity, as I have had all kinds of railroad experience, I think.

MR. MCGOWAN: Then you desire to have the committee ask questions? A. I don't care. I have been pretty busy, though. I have a fight over in the other end of the chamber—in the Assembly, and I have not slept for two nights, but I can start out with a little outline: I was elected Railroad Commissioner by accident, I guess. I didn't expect to be when I ran, but I then had looked into the railroad situation a little bit.

MR. EARL: What time are you referring to, the last term? A. Six years ago. I want to be impeached on both, if at all, as my record is consistent. I started out with one idea, and I have not accomplished it yet. And I thought then—I give it all to you—the whole record, for the first part is only a part of the second, and it is pretty hard for me to segregate them. There is a little detail connected with them. I have listened to a great many railroad experts, and a great many figures both by experts and discharged experts, and I don't think there is but one way to regulate a railway company, and that is on a business proposition, and there is nothing else that will stand in equity. If you don't know what a railroad costs or what it costs to operate or fix up a value for a road, you cannot regulate it. And when you attempt to, you are groping in the dark. I made my fight before the people the first time on the ground of my independent position—that I didn't belong to anybody; and I wouldn't pledge myself to anybody because I didn't consider, according to my ideas of honor, it would be right. I have a good many documents there, and I think the explanation will let you into my idea. I started out on the proposition that there was only one legitimate way to regulate the railroad, and that was to find out its cost and operating expenses. In other words, to have an annual statement of their business transactions and conditions, and it would either show a loss or a profit. If the profit was too great, it should be reduced. The matter of your tariff schedule is only a matter of adjustment or classification—an adjustment, according to my idea. Of course, you can adjust it to circumstances and conditions, but you have to have so much revenue in order to maintain and operate your railroad, if you should pay your interest; otherwise your business is not very lucrative, and don't need much regulating.

I have had considerable experience, as my record shows here. I went out on the proposition unpledged, but in my mind and heart I was a little bit prejudiced against the railroad, which has made me act with a great deal of caution. I started out at the outset to help out Watsonville in the berry business, for the rates were so high that there was no profit in them, and they wanted the rates reduced, and I proceeded to get them better rates, train service, and get them a depot. I did this because it was my district.

MR. MCGOWAN (interrupting): If you will pardon me for the suggestion, Mr. Rea, but confine your testimony to the recent election. A. The reason I refer to this is because I made a reduction there, for which every paper in my district criticised me and said that I had better wait until the people asked me to do it—to get a reduction. That the people of my district were big enough and brave enough to express their own desires without my stepping in and anticipating their wants,

and those criticisms are on record, and a great many of them in the Railroad Commissioners' office.

MR. MCGOWAN: Confine yourself, please, to the last two years, and we will consider that. A. Well, then, I was reelected by about eight thousand majority—so the people didn't impeach me—over the great Judge Archer, who is probably more able than I. I received so much criticism, not that I care for criticism—I really enjoy it.

I didn't complain at the papers for criticising me, providing they only advertise my business a little more. Now my idea, as I said at the outset, in the regulation of roads and railroads has remained unchanged. But you Senators, you know it is pretty hard to get your colleagues to agree with your ideas. Some of them may think you are cranky, and some may think one thing and some another. Some may go off on a schedule, and another may think of some other plan, but I had in view my idea of cost of road all the time. You will find, however, by the way, as a matter of fact, that every decision that is in those books, with the exception of one, is against the railroad company. That is a matter of record, and that is in the case of Robinson against the Southern Pacific Company, and I decided twice in his favor. Then I reversed myself—half reversed, as it were.

MR. MCGOWAN: Is this during this last term you are speaking of? A. No, that is last term. I cannot get away from it; but that is a fact. That was last term. No, this term I think I was unanimously against them.

But, as I said before, my idea was to get at the cost of those roads, and to my mind it is simply idle, it is simply foolish, to try and regulate the railroad company unless you know what it costs—unless you can fix a basis upon which to act as a matter of investment.

The record shows for itself what my decisions are, and what my communications were, and let me say, by the way, to carry that idea out—I find no objection to Mr. Leeds at all—I used Mr. Leeds for a purpose, and I accomplished my purpose, and nobody knows it. But I will tell you now I tried to get in with Mr. Leeds, but I could not do it. He tried to use me—well, I used him, so we broke even. He accomplished his purpose and I did mine. I could not get my colleagues, without a great deal of trouble, in fact Mr. Litchfield and I never did agree, and I never did apologize, but I do owe him an apology for some things, I guess. But I really enjoyed the agitation that was going on, because I thought a great deal of good would come out of it. I thought there were a great many honest men, and I have the consciousness of knowing that no very great wrong could come from it. Therefore, in my communications or in the communications of the Board with Mr. Leeds, the Board absolutely compromised itself on a policy upon its powers and methods of procedure that was in keeping exactly with my views—and if I am going to be impeached for anything, put it in the records that I am impeached for that—which was for this purpose—that when an investigation did come, that there could not be any question but what it would be an honest investigation and properly conducted. My purpose was to get at the cost of the roads and their operating expenses and cost of maintenance, etc., which I don't know to-day, and there ain't a man in the State of California—not one outside of the railroad company—and I don't know whether they know or not—I don't think some of them do—but Mr. Shively brought in a complaint and Mr.

Leeds refused to join him—Mr. Leeds didn't want an investigation, and then Shively concluded that he didn't, but that he wanted an arbitrary reduction of 20 or 30 per cent, and apply it to the Western Classification.

Of course my common sense taught me that that would not do without any investigation. It was not law in the first place, according to all the advice that I had, and my own judgment was that it would be idle. Mr. Shively, of San José, an enterprising citizen, and a man whom I would like to have you call before you, entered a complaint in that Board. Before he did so, however, he came to me. Part of these resolutions were adopted before this Commission—one or two—but I think that you will find that he filed his complaint, and I think my colleagues will bear me out, that they looked on it with an eye of suspicion, for Mr. Shively said that some of the merchants tried to throw him into bankruptcy. The railroad company was very much displeased, and there was general displeasure all around, and I sustained Mr. Shively. I was alone, but I thought the people would indorse it when they found out the facts, and I think so yet. Now, he proceeded with this investigation, which of course has been hampered. I wanting to get at these facts, spoke to several of my friends, one of whom was the Secretary, calling his attention to look out for an expert, and I forget whether the Secretary suggested the name of Colonel Morgan or whether I saw his name in the paper, but when I read it, or heard it, I knew that he was in the Patterson Commission—a Commission that was in opposition to the railroad company.

I met Colonel Morgan at the Railroad Commissioners' office, and we sat down and had a talk to the following effect: I asked him about his references, and he referred me to Mr. Stevenson, whom he said was a close friend of his—a friend politically and otherwise, and knew about his ability in Illinois, and who is now Vice-President of the United States. I didn't consider him as important at that time as some of the other gentlemen—Senators Palmer and Morrison. I think the Chairman of the Inter-state Commission, and a number of other gentlemen—I forget the names—maybe I have the letters—anyhow, I telegraphed to those gentlemen, and wrote them letters and received answers. Colonel Morgan assured me that he was independent of any influence in the world, and that whatever his report would be, it would be honest and based upon facts, and a report that he could sustain hereafter. He wanted a little money down, but we finally agreed not to pay, and that is another point about the Commission that I would like to explain. Finally we agreed among us that if I could convince my colleagues, that he would proceed to do the work and take his chance with the Legislature for his reward—my purpose again was this:

When Shively came to me, he said that he had the evidence, he thought, from a certain gentleman who had sworn him to secrecy, and who afterwards swore me to secrecy—and this will be new to my colleagues—that he had the statement of the business of the railroad company for fifteen years, and that their actual profits were \$15,000 net per mile. Well, the hair stood on my head, as a matter of fact. I had a talk with him, and he assured me that he had the documents to back it up—assured Mr. Shively that he had, and with that in view, and with Colonel Morgan to sustain it, I thought we would have facts before the Commission that would sustain them in any judgment that they might make, and, if they didn't make a just judgment, that the people of this

State would know absolutely the condition of the railroad company, and they would know upon what basis to regulate them hereafter. Colonel Morgan came in, and I am not prepared to sustain Colonel Morgan's report at the present time. Neither am I prepared to successfully criticize it, but I intended to be, and expected to be brave enough to either tear it to pieces or brave enough to say that I sustained it. That was the position I had formulated in my own mind.

Now, gentlemen, I don't care anything about the abolishment of the office of Railroad Commission so long as it ain't an imputation upon my good name, but when it comes to that, I will fight my weight in wild cats.

MR. MCGOWAN: I think we can get at this better by asking questions.

A. Yes, sir.

Q. You talk about the Shively complaint? A. Yes, sir.

Q. Is it true that you asked him to file that complaint? A. No, sir.

Q. Did you suggest it to Mr. Shively? A. No, sir; he came to me with the complaint before I ever saw him.

Q. Did you ask anyone else to go to Mr. Shively and induce him to file it? A. No, sir.

Q. Did you know of it going to be filed before it was? A. Yes, sir.

Q. Did you or your attorneys assist in formulating that complaint?

A. Well, my attorney came to me and asked me if I had any objections to his being attorney for Mr. Shively—that is, my attorney—and I said, "It depends; I want you to be his attorney—I prefer it—providing you know Mr. Shively will stand pat, and won't be pulled down in the complaint that he will file." Mr. Shively had said the same thing to him about me—that he didn't want to file it unless he knew he would have a fair hearing.

Q. That is a case of mutual admiration? A. Yes, sir.

Q. Did you see the Shively complaint before it was filed, privately?

A. Well, I will give you the whole circumstances. Mr. Shively was looking for me for a week or ten days. I had a friend in view whom I had intended to go and ask to file a complaint before the Railroad Commission—that is what I intended to do, but Mr. Shively came along about that time. I didn't know whether he would suit me so well, as I didn't know where his interest was.

Q. (Interrupting). You had somebody else picked out, did you? A. Yes, sir.

Q. So Shively happened to come in the right time? A. Yes, sir; he was a creature of fortune, as far as I am concerned.

MR. SEAWELL. He is a man of destiny? A. Yes, sir.

MR. MCGOWAN: While you were deliberating on this matter, Mr. Shively came along? A. Yes, sir. Mr. Shively came along, and he is an enterprising man, and interested in most every business in Santa Clara, and he saw the railroad situation, and I guess he thought it was a good time to air his grievances. He had been defeated in a good many things, and he thought the railroad had done it.

Q. He wanted to make himself Governor? A. No; he thought they had been making \$15,000 a mile profit. I don't know what his idea was, however; I cannot speak for him.

Q. Now, you say you saw this complaint privately, before it was presented to the board? A. Yes, sir.

Q. Did you suggest to Mr. Shively or any one how the complaint

should be formulated? A. Mr. Shively had it with him, and I said it was all right. I thought Mr. Richards knew how to file a complaint. Mr. Shively didn't know anything about my ideas. He didn't know he was doing something that was tickling me at the time. He didn't know that, I don't think, but he asked me the questions.

Q. Did you suggest to Mr. Shively what should be incorporated in that complaint? A. No, sir; not at first, but I did latterly. When Mr. Richards came in first he had 20 per cent less on all railroad companies.

Q. That is the only suggestion you made with reference to the complaint? A. Yes, sir.

Q. Did you hold out a promise to Mr. Shively or Mr. Richards, to the effect that you would sustain the complaint if you had this evidence to sustain it? A. No, sir; this is what I said to Mr. Shively, and it was only in keeping with my ideas. I said, "You will have a fair, square, hearing in that Commission, or I will resign; but I believe that you will have a fair hearing. I believe that that is an honest Commission," and I think so yet, with all due deference to the press. But I says, "When it comes to my final conclusions I will use my own judgment."

Q. Now, the fact that you were willing to bring forth the Shively complaint was concealed for a long time— A. (Interrupting.) No, only three or four days—a few days—maybe a week.

Q. You didn't make it public that you were the instigator of the Shively complaint? A. No, it was only the way I stood.

Q. Well, you contemplated it, anyhow? A. Not to Shively.

Q. Well, to somebody else? A. Yes, sir.

Q. Well, what was your purpose in bringing that about? A. My purpose was, gentlemen, that I didn't believe the railroad companies of this State, or any other State, will ever be regulated—justly regulated, as they should be—until you fix a price upon which you are going to estimate their value. That is, their cost, or a price which you will agree upon for their assets—that is, their plant. Now, here is the point; you are getting right down to facts.

MR. MCGOWAN: Something we want very badly here.

THE WITNESS: Yes, and something you will have, too. Mind you, my idea is, you take and reduce a railroad company—I move—make a motion for instance—we will say you and I are Railroad Commissioners—

MR. MCGOWAN (interrupting): Two is enough.

A. Yes, that settles everything. My friend Litchfield has not been in it from the start, until lately, so I will exonerate him and take all the blame that is attached to him. Now if you and I were Railroad Commissioners and you should make a motion—I move that we reduce the railroad company twenty per cent on rates and I ask you the question, on what ground do you do that—

MR. MCGOWAN (interrupting): Well, am I supposed to be acting as a Railroad Commissioner?

THE WITNESS: Yes, you are my colleague now.

MR. MCGOWAN: Well, if I was your colleague I should suppose you got the business from the sheets. A. Well, if you had the reason, that you intimate, you would not be making the motion—you would not be making the motion.

Q. You would be the actor in the matter. That is what we are complaining about now— A. (Interrupting.) Well, I would not be ask-

ing you to make the motion—I would not be asking you to make the complaint.

Q. I must concede my ignorance in this. A. I make the statement to you without fear of contradiction that there ain't a man in the State of California to-day that knows the cost of these roads, and I will make the further statement that you cannot regulate them, and nobody can regulate them, until they do know.

Q. Did you think that by the bringing forth the Shively complaint you would find out the cost of the railroad? A. Yes, or so near it that there was no fun in it; or I could say to the people that I have failed in this, and here are my obstacles.

MR. SEAWELL: Do you admit that you cannot control and regulate fares and freights without knowing the cost of the railroads, and that you cannot ascertain what they cost? A. No, sir; I think this—I am speaking now about equity. When a man is an official he has an official oath, for it is as sacred to him as mine is to me, and I don't wish to do an injustice to a railroad company unless I can justify it in my own mind—at least my course. That is, I don't wish to make an arbitrary ruling unless I can justify it by the facts. If I am a banker and running a bank and make an annual statement, I make a statement of my assets. We will say they are \$100,000, and my liabilities are so much and my income is so much, and the rate per cent is so much, and we declare such a dividend, and so much to the sinking fund. And so the railroad company comes before the Commission. There is two sides to this question, for they say they ain't making any money. They claim that they are not making money.

MR. SEAWELL: That is not the purpose of my question. You misunderstand me. You say there is not a man in the State of California that knows the cost of construction of this railroad— A. (Interrupting.) Outside of those people connected with the railroad.

Q. And you say that you can not intelligently regulate freights and fares until you know that? A. I don't think so.

Q. Then you say that it is impossible to ascertain the cost of the road? A. Yes, sir; without calling for the facts from the railroad company, and the way to get at those facts was the way that I proceeded to do, and the way that I induced Mr. Leeds to do—was to file a complaint. My purpose was, if Mr. Leeds would file his complaint from the Traffic Association, backed as he was, financially—for you know it costs money to make these investigations—the railroad company, as I expressed it to Mr. Leeds, would have their hands up. He could come in and call for this statement and that statement, and he would get them all, for it is within the power of the Commission to order them produced, and by doing that, the Railroad Commission would have all of the facts and all of the evidence that the railroad company had in their possession concerning their business.

Therefore, they could then proceed to regulate and ascertain the cost, and until that is done there is no use to bother much with their tariff. If they were making \$15,000 per mile they were making too much. Did I answer your question correctly, Senator?

MR. MCGOWAN: When did you come to the conclusion that rates could not be equitably adjusted until the cost of the roads are determined? A. Before I was a candidate for Railroad Commissioner, I discovered that, and I spoke on that subject.

Q. Why didn't you make an effort before election to ascertain— A. (Interrupting.) I did.

Q. What did you do within the last two years to adjust freights and fares, Mr. Rea? A. The first thing was to make an arbitrary reduction such as 10 per cent. Mr. Abbott was my colleague then. That was on the Northern Division.

Q. What have you done officially in that direction other than the proceedings under this Shively complaint? A. Oh, well, when you come down to what you have done—there are a great many things that have been done.

Q. I know, but your official acts? A. My policy with regard to my official acts is not to make any more noise than possible, but to adjust rates between the railroad and the shipper, as far as I can, without coming in between them.

Q. Mr. Rea, I want to know what you have done within this last two years to determine the cost—you say that is a necessary element? A. For the last two months there has been a complaint before the Commission, and it has been an active investigation. Colonel Morgan's report did not contain the cost, which I intended it should, and I was thrown away from my main issue—cross-tracked by this side fight that was going on. Mr. Leeds was on the stand six weeks, pretty near.

Q. In the Shively investigation? A. Yes, of course; we only held meetings there three days in a week on account of the attorney's law days, and I had a day of my own, too.

Q. Have you done anything else within the last two years to determine the cost of these roads? A. No, I have not, except this investigation. I expected it would determine it almost conclusively, and if this Legislature would help us out, I had intended to make a recommendation to that effect, to have them appoint, after we got the facts all out, to ask them if they would appoint an expert to verify those facts, and to go over those books. Of course, it would cost considerable money, and I didn't propose to put it up. I did not consider it my duty.

MR. MCGOWAN: When you went into office at the commencement of this term you had the belief that the only way to determine the equitable rates was to ascertain the cost of construction, the cost of the road; and you never made any attempt to arrive at that until the Shively complaint? A. That is a fact. You must remember that this is an awful undertaking. It is a gigantic undertaking, Mr. Chairman.

Q. Let me ask you, if you knew as a fact all the time, up to the time of the Shively complaint, that you, as Railroad Commissioner, had the power and authority to determine the cost of the road? A. I think I knew it.

Q. You thought that right was vested in the Commission? A. Yes sir.

Q. Well, why didn't you invoke it? A. Well, I got so severely rebuked for it—for what I did do—by the press.

Q. Do you allow the press to deter you in carrying out your official duties? A. Well, it has great influence, especially when there is such a vast amount of labor with it all.

Q. Do you want us to draw the inference that the press was the one to blame? A. No; you can lay it on me if you want to.

Q. Well, you possess the power to invoke the law. You had the power? A. Only one third of it.

Q. And you made no effort to invoke it up to the time of the Shively complaint? A. Oh, yes; I tried to do it always. And let me tell you right here, I did try, and made an effort, too, and let me tell you that you can't get a man game enough to do it. They don't seem to stand up, somehow or other; they won't make that motion; they have to be backed by the press. For instance, you take it when there is an agitation going on, and the press is behind the movement, and a man expects to get glory out of it, then you can get men to act, but in times of peace, and I have been through peace and war, and I can speak; in times of peace, I say, you cannot get them to do it. My idea was to get this movement, that was going wild—going off, as I know, and if you don't know, you will know it—in a wild-goose chase, and in the wrong direction. But if you get behind an investigation of this kind that is backed by a Commission that is honest and fair, and get all of the facts and settle the question, and it was my purpose, before my term of office expired, to render an account, in the shape of a document on this subject, that would be standard literature on railroads in this State for twenty years to come, and I think I would be able and competent to do it.

MR. MCGOWAN: The complaint is that it has long been delayed, Mr. Rea? A. Well, there is a great many reasons for that.

Q. The object of filing and encouraging the Shively complaint was to determine those questions? A. Yes, sir.

Q. Understand, Mr. Rea, no disrespect is meant to you by this question at all, but was it not a part of your object to have the complaint filed to annoy the Southern Pacific Company? A. To annoy them—that was the secret. I was accused of trying to blackmail the Southern Pacific; and I shrunk from it, and at least one half of the people of my district, or enough of them to represent one half, came to me and said I was ruining the whole prospect of that district, and that the railroad company would not build that road into the section of the country which they had contemplated, and, although I had burned my fingers, I went slow. But if I thought the responsibility could be laid on the Traffic Association, I could come out all right.

Q. What responsibility? A. Of the results of the Shively complaint.

Q. Did you desire that the responsibility of the Shively complaint should be laid at the door of the Traffic Manager? Was that your purpose when the Shively complaint was encouraged—that it should annoy the Southern Pacific? A. No, sir.

Q. Then, Mr. Rea, you swear that you had no purpose for revenge upon them? A. No, sir.

Q. Nor no desire to even up with them? No, sir; it was only a duty that I owed to the people of this State.

Q. Was it your purpose to irritate or annoy your colleagues? A. No, sir.

Q. Is it true that you asserted, at a meeting of the Railroad Commissioners, that the Railroad Commissioners got their fares and rates from Fourth and Townsend Streets; did you ever state that during the Shively trial, or at any other time? A. I don't know; Litchfield would know. I joked him a good deal.

Q. Do you recall that statement that they got their rates from Fourth and Townsend Streets? A. Well, that is a fact; I have done this, for instance, on lumber, in the Santa Cruz Mountains. There those people

have a great deal of trouble, and I have gone and arranged freight rates for them, and gone to the Southern Pacific people, and they made out the schedule.

Q. Their rates you take and adopt; is that it? A. Well, they take our rates and adopt them in the schedule.

Q. Well, now, did you ever make such a statement as I have mentioned a few minutes ago, before the meeting of the Railroad Commissioners? A. Well, I might have said so. I have been joking Mr. Litchfield, to tell you the truth, a great deal, and while I don't believe it was true with him, I might have said something like that to him.

Q. You might have said something like that? A. I might have. I might have said if he got them down there—asked him if he got them down there.

Q. Got them down there? A. Yes; probably I might have said that.

Q. Do you understand, Mr. Rea, that it is your duty as Railroad Commissioner, to establish rates and fares? A. Well, I consider it—I consider it is my duty—and if there is any complaints from the people, to do the best I can from the facts I have at hand.

Q. Don't you understand that it is your duty as Railroad Commissioner to establish rates and fares without any complaint? A. Yes, sir; I understand that it is my duty to establish rates, but I will ask you the question again—I will put the question to you, Mr. Chairman: You have to meet a situation of facts, and unless you have the facts which I first spoke of, you have to rely upon the situation, and take comparative schedules, and all other things into consideration. You have to go outside and take into consideration a great many circumstances and conditions that it is not necessary to do if you have the cost of construction.

Q. Do you understand it is your duty to fix rates and fares without the filing of a complaint? A. Yes, sir.

Q. Have you done so? A. Yes, sir.

Q. Generally? A. Well, now, look here. Mr. Abbott fixed a rate of fares, made a motion they be fixed at three cents per mile—they were then four, I think—something like that—

MR. EARL (interrupting): That was not within the period of this last term? A. But that is low enough, and I did my best to get Mr. Abbott to go into an investigation with me, and Mr. Abbott made the motion for the reduction, and that went before Governor Stanford—

Q. (Interrupting.) Within the last two years have you established generally freights and fares within the State of California as Railroad Commissioner? A. I established that rate generally.

Q. Within the last term? A. No, sir; we accepted that.

Q. Have you made any general revision of the rates? A. In particular instances?

Q. Any general revision? A. All over the State you mean?

Q. Yes, sir. A. No, sir.

Q. Do you claim it was your duty to wait for a complaint to be filed with the Board before you make a general revision? A. Well, I will tell you, unless you do that you would ultimately be buried up in figures and fallacies and arguments, and you never could do anything. That is my opinion and my idea.

Q. But what I want to know is what you understand your duty to be as Railroad Commissioner. Do you understand that you are an actor?

A. Well, I don't understand it is my business to kick up a row in this State, for a man should ask for what he wants.

Q. Well, I am getting at your official duty as Railroad Commissioner. Do you understand from your position, that it is your duty—that you are an actor, and that you are to make a general revision of freights and fares, or that you are to sit as a judicial officer and wait until a complaint is filed with the Board? A. I understand that if there is any discrepancies that it is my duty to fix them. But I say that I don't know, and you don't know, and there ain't a man in this State does know, unless he gets at the trial balance or a statement of the railroad company's affairs, who can do it. There are discrepancies in their schedules, and their testimony mentions it.

Q. But what I wanted to know, is your idea of your duty. Is it an executive duty, that is, that you are empowered to look up fares and freights, or a judicial officer? Which way do you take it—what is your duty? A. (Interrupting.) If you are an individual, and you are a farmer down here—I go according to the individual, or the situation. If you are a farmer and come to me and say, "Here is the condition of fares and freights, and I cannot stand them, and here are our grievances." Now, my policy has been, and I have done it in many instances. I go in and speak verbally to him as I am to you now, and he says, "Yes, I will have a reduction;" and I says, "Well, you have to have that," and he will say, "Yes." And in that case I have gone to the railroad people, in such instances, and argued the case, and after that my farmer and I agreed. I am with my farmer then, and if the railroad company don't agree I stay with him. Then my idea is to have the complaint so you can render a decision. Your colleagues won't act unless you have.

Q. I want to know what was your sense of duty—what was your duty there as Railroad Commissioner; were you an executive officer, empowered to look up freights and fares and adjust them, or were you sitting there as a judicial officer? A. I claimed the Commission was both.

Q. Then you claimed that you should have gone and looked up freights and fares and the other duty was to hear complaints when they came—A. (Interrupting.) Yes, sir; and, for instance, with the Traffic Association. The Traffic Association, through their Manager, comes into the Commissioners' office, and with one wave of his hand says, "Reduce those rates 50 per cent." Well, let us look into that, I say, then. It was then I took the position that I did in these reports here—that it was their duty to file a complaint, because I looked with an eye of suspicion upon the complaint. I have had men, have met men who came before that Commission and come before me, who asked me to go to the railroad company and ask for \$7,000. Well, I don't credit that very much. I don't think his grievances were very great. I have had some of that experience. Mr. Litchfield will explain it to you.

Q. Did you ever make a reduction while you were Railroad Commissioner, that any of the railroads of the State resisted? A. We made decisions that they resisted.

Q. You have? A. Yes, sir.

Q. Did you employ the machinery of the Court to enforce them? A. Yes, sir; we called in the Attorney-General.

Q. Did you ever go to the Courts, I say, to invoke their aid in this

matter? A. No, sir; but they did resist it. The railroad company will surrender, however, if the reduction ain't too big a reduction.

Q. I don't know about that. A. Well, that is a fact, that is, if it is a small reduction they will submit to it, or adjust it satisfactorily before they will go to Court.

Q. Why didn't you go into the Courts and invoke the power and aid of the Court? A. Well, one instance was a case where I maintained that we had the right to put in a side-track; it was for the Farmers' Alliance, and the Attorney-General said we had no power to make the order, and we were going to invoke the power of the Courts, but Mr. Beckman wouldn't consent unless we take a word out and put in "request" instead of "order," on the ground that it was illegal and couldn't be enforced in the Courts, but if the Attorney-General would say that it could be, that he would change the order—and I think that he thought they would grant the relief anyway; in fact, they partially agreed with me to do so, but the Attorney-General decided against it.

Q. Then you give as a reason for not doing so, that the Attorney-General told you it was illegal? A. Yes, sir.

Q. Are there any other cases where the railroad resisted? A. No, sir.

Q. Are there any cases where they refused to abide by the decision of the Commission? A. They have resisted several decisions. One, the last I remember of, was the case where the people were complaining, for some time, and afterwards they struck a compromise. That is the case of that Oakland business. I decided twice in favor of Robinson, and then there were two thousand people of Oakland who sent a petition, which came before the Board, and the railroad company granted their request.

Q. Why didn't you go into Court with this last case? A. In the Robinson case?

Q. Yes, sir. A. Because Mr. Robinson came to Mr. Abbott and myself and asked for \$7,000.

Q. For what purpose? A. For withdrawing the complaint.

Q. From whom did he want the money? A. He told us to go to the railroad company and have them put it up.

Q. Then you refused to go into Court and invoke the Court's aid and power because you thought Mr. Robinson was trying to blackmail them? A. Yes, sir; but in the meantime there were two thousand business people of Oakland came before the Commission and asked for a compromise by petition.

MR. EARL: They threatened to withdraw the commutation privilege, didn't they; and was not that the reason of the petition? A. No; they had just bought out—

MR. SEAWELL (interrupting): Did Senator Earl sign that petition? A. I think he did—I think the Senator's name was on it.

Q. What was the purpose of the petition? A. Well, the purpose was this: In the first place Mr. Robinson brought in his petition to the effect that the company had refused to allow the commuter to ride. There were people in Oakland who started a business—cigar men and saloon men, and this man and that man—and in the name of John Roberts, we will say, they would go and buy fifty tickets or twenty tickets, and they would sell them for 15 cents, and he could ride over to Oakland and back, and he would make 5 cents on that. The railroad company made a fight on this, and they subpoenaed these very men who were doing this

—who were making this fight—and the evidence was that they were making all the way from \$25 to, I think, as high as \$100 a month. It amounted to considerable money. There was quite a number of them in it. Mr. Robinson, of course, wanted the railroad to return that privilege, but the railroad said we would have to reduce our rate from 15 cents for a single trip to 10, or whatever it was, in order to shut out this traffic in tickets. If you force us to that, why, we will have to refuse to allow these people to ride as they are; they are abusing the privilege. When I made my fight for the office of Railroad Commissioner the second time, I ran about six thousand ahead of my ticket.

Q. The first instance you refused to invoke the aid of the Court because the Attorney-General would not sanction it—said it was wrong? A. Yes, sir.

Q. The second time was because Robinson was wrong. A. No, sir; because the people of Oakland wanted it. I felt like throwing him through the window. When he came before the Commission he says: "The railroad company will pull you down," Robinson said, and I said: "Look out, or I will expose you."

MR. EARL: This was not during the last term of your office? A. No, sir.

MR. MCGOWAN: Is there any other case where the railroad company refused to obey the decision of the Commissioners? A. No, sir; and if the Railroad Commission will make a moderate reduction, they will generally obey it.

MR. MCGOWAN: Very moderate? A. Very moderate reduction, but a good deal in the aggregate, and they will obey it before they will fight it, because I think the decision would stand.

Q. You cannot call any other instance where the railroad company refused to obey but those two instances? A. Oh, yes; they refused to obey the Farmers' Alliance—that was during this administration.

Q. Did you go into Court then? A. No; we went to the Attorney-General and quit there.

Q. What made you quit then? A. Well, I quit because he said it was no use to go further.

Q. Why? A. Because it was illegal. I didn't agree with him, however.

Q. Well, why didn't you go on with it yourself? A. Well, he wouldn't go on with it.

Q. Well, you had the right to employ the District Attorney of the county? A. Yes, I know; or the District Attorney of the State.

Q. Well, why didn't you call him in to enforce your decision? A. Well, because there was a question in my mind, and my colleagues thought he was right.

Q. Then they overruled you? A. No, not exactly, but Mr. Litchfield was opposed to it on general principles.

Q. He didn't want to go into Court and enforce the decision of the Railroad Commissioners? Is it because Mr. Beckman and Mr. Litchfield were against it that you let it drop and didn't take it into Court? A. No, sir; I agreed to leave it with the Attorney-General.

Q. Are there any other cases where the railroad company refused to obey the decision of the Railroad Commissioners? A. Not that I can recall now without running through these records here.

Q. You say that as Railroad Commissioner you are both an executive and judicial officer? A. Yes, sir; to a certain extent.

MR. MCGOWAN: Mr. Rea, I am reading now from page sixty of the Thirteenth Annual Report of the Railroad Commissioners—your reply to Traffic Manager Leeds' communication:

"A consideration of the whole of section twenty-two, of article twelve, of the Constitution, will show to any unbiased mind that the Board of Railroad Commissioners is essentially a judicial body; that while it is the creation and the servant of the people of California, it is so in the same sense and to the same extent that the Courts of the State are the servants of its people."

Q. You don't state in that part of your communication that you are an executive officer? A. No, sir; the suggestion is different.

MR. MCGOWAN: "Every sentence and every intendment of the Constitution favors this view of the position and powers of the Commission, and forbids any other attitude on the part of its members than that of impartial arbiters between the transportation companies on the one side, and the producers and shippers of produce on the other. The very section of the Constitution which declares it the power and duty of the Commissioners to establish rates and fares, provides that such rates, when established, shall have the effect of a judgment in a Court of law."

MR. MCGOWAN: You didn't take the ground then that you were an executive officer? A. Yes, sir; a judicial officer, for the reason that here were two—another Commission had arrived at that point in its existence where the Traffic Association upon the one hand and the railroad on the other, with the assurance in this very document, as you will see of the Traffic Association having the power to use the Commissioners to bring out their side, and I thought then that the Traffic Association would have the best of it over the railroad, and ultimately the railroad would have to be protected from Mr. Leeds.

Q. You get your duty from the Constitution—you take your duty from the Constitution? A. Yes, sir.

Q. You would not, as an official, draw your ideas of your duties from the fact that the Traffic Association and the railroad company were equal in power and antagonistic? A. I consider my duty is to do justice to both.

Q. You don't get your idea of your duty from that fact; you get it from the Constitution? A. Yes, sir; and my common sense.

Q. You get your duty from the Constitution and your common sense? A. Yes, sir; from the Constitution.

Q. Then in determining your duty you should be governed by the Constitution? A. Yes, sir.

Q. And not by two antagonists that were equal in power? A. But what is the Constitution framed for?

Q. I don't know; it is a matter of doubt now.

Q. What I want to call your attention to is that you didn't take the ground then that you were an executive officer?

Q. The situation is different when you have an honest complainer. A man who tells you, as Mr. Leeds told me before that document was filed—when I went to him I says, "Mr. Leeds, you explain to me, as I explained to you, my reasons and my purpose;" and I says, "Mr. Leeds, I assure you, sir, that you will have an ally in that Commission that will be as great an ally as there is in the Traffic Association so far

as bringing out the facts is concerned, and I shall reserve only the right to do justice at the end. Then I am willing to be responsible for these conclusions to the people of the State of California." Mr. Leeds' reply was that he "didn't care anything about the regulation of the railroad company; all he wanted was agitation, and he would get through withal." "Now," he says, "I even asked their permission to become Traffic Manager for the Traffic Association."

Q. (Interrupting.) Whose permission? A. The Southern Pacific Company, and the telegram is in the hand of Mr. Stubbs. I made this remark to Mr. Leeds, to him, one day, and Mr. Stubbs gave it away and showed the telegram.

Q. Then I understand that you took the position that the Railroad Commissioners were judicial because Mr. Leeds was dishonest? A. No, sir; not exactly.

Q. Is that one of the reasons? A. Yes, sir.

Q. That is one of the reasons? A. Yes, sir.

Q. You took the position that you were a judicial officer? A. Yes, sir.

Q. Against your idea of your duty that you were an executive officer—that you were a judicial and executive officer, simply because Mr. Leeds was dishonest? A. No, sir; not altogether that.

Q. Was it to any extent that reason? A. Yes, sir; it was this: In the first place we are a judicial body. We have a double power, you will admit that.

Q. But you didn't say that in your communication to Mr. Leeds? A. Yes, sir; I say so in the communication itself—if I am not very badly mistaken it is in the communication. If I don't in this, I do in another.

MR. MCGOWAN: I read from page 7, Section 22 of Article XII of the Constitution—from your report to Governor Markham: "Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for transportation of passengers and freight by railroad and other transportation companies, and publish the same from time to time with such changes as they may make. This sentence from the organic law would seem to be susceptible of but one construction as to the powers and duties of the Commission. A consideration of the whole of Section 22 of Article XII of the Constitution will show to an unbiased mind that the Board of Railroad Commissioners is essentially a judicial body; that while it is the creature and servant of the people of California, it is so in the same sense, and to the same extent, that Courts of the State are the servants of its people. Every sentence and every intendment of the Constitution favors this view of the position and powers of the Commission and forbids any other attitude on the part of its members than that of impartial arbiters between the transportation companies on the one side, and the producers and shippers of produce on the other."

Q. That is the same statement you made to Mr. Leeds? A. Yes, sir.

Q. Now, why did you make the same statement to Governor Markham? A. This is what I claim. You can fix rates in but one of two ways. You are a judicial body when you render your decision; you are an executive body when you investigate.

Q. You made substantially the same statement to Governor Markham as you did to Mr. Leeds? A. Yes, sir.

Q. And you say your object was—in making this statement to Mr. Leeds—was that he was dishonest? A. Yes, sir.

Q. Now, what was your object in making a similar statement to Governor Markham? A. For the simple reason that you are a judicial body—the Commission—and our duties are twofold. When you render your decision it is judicial. It is not legal, however, unless you have the facts upon which to base that conclusion. Now, how are you going to get the facts upon which to base a conclusion—that is, for the whole regulation. Now, I admit this, that when you come down to the technical construction of this Constitution to regulate a railroad company on a wholesale basis, that we are essentially a judicial body; but when we come to regulate railroads as a Railroad Commission should, for the benefit of shippers in any particular section, knowing that the power lies—properly brought about and exercised to put the machinery in operation—you make the railroads do something by putting into force something that you cannot put into operation—

Q. (Interrupting.) I want to know why it was you made substantially the same statement to Governor Markham that you made to Mr. Leeds, if your reason was that in making the statement to Mr. Leeds was that he was dishonest? A. Well, it was to be consistent with the other decisions.

Q. Then, because you made a wrong statement of your duties to Mr. Leeds, you also made the same statement to the Governor? A. No; I claim my position with Leeds is law, and I have the advice of the best lawyers.

Q. And you don't claim now that your duties are solely judicial? A. I do, in the sense that what the people of this State wants is not demagogues, who want popular favor—to work himself into popular favor by getting at this or that which cannot be determined; but to view their acts, and not to fritter away the rights of the people by taking a wrong position, and one that won't stand under that line of argument. Placing it as a judicial body, their decisions will stand before the Courts of this State.

Q. Still you have not answered my question why you made the same statement to Governor Markham that you did to Mr. Leeds. Your object in making it to Mr. Leeds was because he was dishonest? A. I say because he was dishonestly actuated, it had an influence over my actions.

Q. Do I understand you to say that you assumed the position that you did with Mr. Leeds, simply to get the best of him in the controversy? A. No, sir; I took the position I did with Leeds on legal advice, which is a matter of law, and I am not a lawyer, but I was following legal advice upon that in order that that Commission, which belongs to the people of the State of California, would not be compromised and humiliated and thereby humiliate the people, especially those whom I represent. But still at the same time my opinion is that you can do a great deal, and the railroad company will submit to a good deal without going to meet you on legal contest.

Q. Then you stated to Governor Markham in your report that your duties were essentially a judicial body—when you stated that it was the truth, was it? A. Yes, sir; in the sense that the communication to Governor Markham was addressed to him.

Q. In the communication—not the communication, but the report.
A. Well, the report.

Q. I will also call your attention to this on page 61 of the Thirteenth Annual Report: "This Commission welcomes the fact of the formation of the Traffic Association, and of its employment of so able and skillful a representative as Mr. Leeds. At last the time is ripe for such a revision of the freights and fares of transportation companies as shall give satisfaction to the people of the State of California, without doing injustice to the transportation companies. Such a revision, if undertaken by this Commission, would be most complete. It should not affect one industry, or one product, or one class of shippers alone, but should embrace every industry, every locality, every product, and every producer of the entire State. This Commission has the power to make this revision, and is ready to exercise it as soon as the proper conditions exist and the proper facts are before it."

Q. So up to that time there had been no general revision made—up to that time. Was there a general revision made up to the time you wrote that? A. A general revision in this term of office? No; never has been since my term of office—there has never been a general revision.

Q. I also call your attention to this on page 62 of the annual report—

THE WITNESS (continuing): But if this Legislature would get behind this Commission, and aid us—

Q. (Interrupting.) What other or general powers do you want to aid you in your proceedings as Railroad Commissioners? A. We want the power to employ experts to go over their books, or do it yourself, and set aside a fund for it.

Q. Have you ever demanded that from the Legislature? A. They didn't give us a chance. We intended to.

MR. SEAWELL: Do you ask for that in your report? A. No, sir; I don't think it is in there. A communication was sent by Mr. Beckman and myself, wherein I expected, and I think he did, to open up that subject; but it never was answered, or it was absolutely ignored.

MR. MCGOWAN: I want to call your attention to this, on page 62: "Between these two opposing interests, each seeking its own advantage, the Board of Railroad Commissioners will occupy the position intended for it by the framers of the Constitution, and for its conclusions, judicially and impartially arrived at, its members will be responsible to the people of the State of California."

Q. You don't say anything about an executive officer there? A. You don't need to when you have Mr. Leeds of the Traffic Association—equipped with Mr. Leeds, with his ability, as we thought he had at that time, and the Commission thought he had, that he would furnish the money, and that the State would not have to do it.

Q. That he would hunt up the evidence, and you would merely sit in judgment? A. Yes, sir.

Q. And the Railroad Commission would be the judicial branch? A. Yes, sir; that is my idea.

Q. Did you get that idea from the Constitution? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. I have your construction of the Constitution. Mr. Leeds, and the Traffic Association— A. (Interrupting). You are not taking into consideration the fact that here was the Traffic Association with a hid-

den purpose. They won't give you their purpose or views, only they want a reduction. That is all we could get from them. The railroad people will protect themselves, and the Traffic Association will do the same, and which was the proper thing to do under the circumstances—to which would we lend ourselves; to the railroad company?

Q. No, Mr. Rea. A. Well, would you want me to belong to Mr. Leeds and take his programme?

Q. No, sir. A. You would want me to be in a position and looking on at the fight, and not get in there and have the railroad company commence punishing me through their papers.

Q. You wouldn't be acting as a judicial officer then? A. I should reserve the right of my judicial position to decide what I thought was right.

Q. Mr. Rea, I will read from page 168 of the Thirteenth Annual Report of the Railroad Commissioners—a communication published in the Sacramento "Record-Union" from L. C. Hatfield, and is as follows:

"The Railroad Commissioners are not prosecutors, but judges, and when cases are made they can be forced to act if necessary; but there must be a case. If it is simply a question of exorbitant charges and no relief can be had, then competing lines of transportation are the only solution; but so long as the entire traffic coming into and going out of this State does not crowd a single-track railroad, it is evidence that there is not enough in it to offer very flattering inducements to others. Possibly the Traffic Association Manager can show his principals how to succeed that way, but he must make good his claims in order to sell stocks and bonds. Strangers will not build lines of transportation into a State inhabited by a race of rascals, the chiefs of whom are in control of the transportation business."

Q. Now, I want to ask you as a Commissioner, Mr. Rea, why that communication to the "Record-Union" was published in the Thirteenth Annual Report? A. Because it was merely in keeping with the ideas of the Commissioners, I suppose.

Q. That was in keeping with the Railroad Commissioners? A. I didn't know it was in there.

Q. If it was in, it was for that reason? A. I presume that is the same as the Morgan Report, which was not the idea of the Commissioners, but it was put in because they thought it was a good document—because it had information in it.

MR. BECKMAN: If the Board will permit me, I will explain that; I left that in the office, and how it got in here I don't know. It should never have gone in there.

MR. MCGOWAN: I read also from page seven, about the middle of the page: "I understand that all the Traffic Association wants is a square deal, and equipped as it is with such a Manager, it ought not to require the Commission to assume any other attitude than one of judicial impartiality between it and the railroad companies." Is that your sense of duty as a Railroad Commissioner, Mr. Rea? A. I think it is exactly my sense of duty.

Q. Then you didn't take the position then that you were an executive officer? A. Not with Mr. Leeds.

Q. Never did take it with Mr. Leeds? A. No, sir.

Q. Well, why didn't you take that position with Mr. Leeds, if you believed it to be the true one? A. Well, I will tell you, and I am

responsible for the position, because my idea—it was my pet hobby, as I told you at the outset, to bring out all the facts so that I could submit a report to the people of this State, and a financial statement, if you please. Then I thought Mr. Leeds would supply the breach, as it were, and what the Commission could not suggest Mr. Leeds could, and what he could not, they could, and it would be the fullest and fairest investigation that possibly could be made, and would give satisfaction all over the State, and if the papers would have supported it it would have—well—

Q. (Interrupting.) Well, I understand the purpose in concealing from Mr. Leeds—your object was to throw Mr. Leeds in the breach so that they would make the fight? A. Yes, sir.

Q. To get him in position? A. Yes, sir.

Q. And all the time you believed and knew as a part of your duty that you were really an executive officer? A. I think I could exercise it if I chose, and I think the framers of the Constitution, and the Constitution itself, contemplated that that Commission should be just between the people and the railroad company. Do you mean to say that if there ain't anybody complaining, but they are all satisfied—everybody satisfied, you would have the Commission go and kick up a row?

Q. No; but I would want them to go around and see if everything was all right. A. Well, we did that, and published it in the papers. They came to me lots of times. We even published that we were coming, but when you are an official you cannot lend yourself to railroad companies—if you do, and they own you, the people have no show at all; if you are owned by a combination, the railroad company has no show, and neither has the people. Mr. Leeds was smart, and not wishing to get himself into any awkward position; but, I believe, if he wanted anything he should come and ask for it, and not come and say in an off-handed way, "Reduce them 30 or 50 per cent"—he wanted an arbitrary reduction.

Q. Now, will you swear, Mr. Rea, that while you were Railroad Commissioner for this last two years that freights and fares have been equitable and just? A. No, sir.

Q. Will you swear that they have been unjust? A. No, sir.

Q. Will you swear that they have been against the shipper and producer? A. In some cases they have been in the interest of the shippers, and in some cases they ought to pay better rates.

Q. Will you swear that there are not cases of exorbitant charges? A. I think we have corrected a great many.

Q. Will you swear that the railroad company has not discriminated against the people? A. (Interrupting.) They have not—it has not come to my knowledge.

Q. Will you swear that the freight and fares generally are fair and equitable in this State? A. I will not, because I have not the facts to bear me out. There is an investigation going on now, and if the investigation had gone on as I wanted it, the Traffic Association, and all and everybody were invited, and here was a Commission that didn't amount to that—if the facts were brought out, I could see, and then I could say what was right and just.

Q. Then I understand you to say that the investigation of the Shively complaint was for the purpose of regulating fares and freights? Is that it? A. My purpose was to demonstrate this and to regulate them.

Q. Why didn't you do that two years ago? A. Because I started it once and got my fingers burned.

Q. Did you file a general complaint as the Shively complaint? A. Yes, sir.

Q. What complaint was it? A. Senator White's brother, of Watsonville.

Q. How long ago was that? A. Four or five years ago.

Q. I mean within the last two years; have you done so within the last two years? A. No, sir; I made up my mind not to do it again.

Q. Why, then, did you do it in the Shively case? A. I meant for an arbitrary reduction; I got a little wrong. Mr. White put in his report, which you can read here, if you will go back. Mr. White asked for a thing which the Commission could not regulate, however. In other words, they wanted a reduction; that is, they wanted the freights from Watsonville and Pajaro—to reduce them to the same rate—and the railroad passed on the complaint. There were other elements that came in there. One was a lumber fight, which was adjusted; and they passed that, and it was illegal. At that time I was kind of young in the matter, and Mr. Abbott gave a reduction of 10 per cent, and issued the order. The people of Watsonville wanted certain things done along the line of that road. There were a great many complaints. There were the wheat rates, and wood rates, and other rates that were complained of; and, together with a number of people of Watsonville, whom I consulted on the matter, we made a compromise, and the railroad company and the Commission agreed to take a certain schedule, which we did, and did not enforce an arbitrary reduction. Now, that was the case there. Then I made up my mind to do it that way; I got all the criticism, and I had to get out of it that way.

Q. Now, if you didn't know whether or not freights and fares were just in the State of California, why didn't you investigate the matter? A. I have, to the best of my knowledge, and as far as the facts are concerned, and have come to the conclusion that you can only get at the facts the way I spoke of last night.

Q. The reason why you hired Mr. Morgan was because he was an expert, and thoroughly understood the business, and you felt that you were not equal to the task of giving it a thorough investigation, as he could give it? A. And Mr. Leeds is not, either.

Q. You modestly felt that you were incompetent to carry on that extended investigation that Mr. Morgan carried on? A. Yes, sir; I see your point, and I ain't dodging it, either, and you need not dodge it.

Q. I am not dodging it. A. That has been the business of Mr. Morgan for years. He is a railroad expert, and, as a matter of fact, when his abilities are placed at work—in fact, I might say, when people worth millions wish to loan money on bonds, they employ him to look over these roads to see if they can afford to loan their money. Therefore, he is a man of more than meager ability. Now, when you come to the matter of incompetency in all of the departments of the railroad service, and all of its intricacies, and all the adjustments, and what an equal adjustment of schedules is, and in the making of machinery that runs the railroad, and all these matters connected with a railroad, you cannot get a Railroad Commissioner in the State of California to be competent in every department, and no

man is. But as far as my competency is concerned, those parts that I lack, I intended to supply.

Q. With Mr. Morgan? A. Not only with Mr. Morgan. I intended to have Mr. Morgan make his report to me—

Q. (Interrupting.) Your purpose was, in securing him, was that you felt incompetent to go into a general revision for the purpose of determining whether or not the rates were equitable or just. That was one of your purposes? A. One of my purposes in hiring Mr. Morgan was to supply a portion of the knowledge that I did not possess.

Q. To work upon a line that you were incompetent to discharge? A. Yes, sir.

Q. Have you investigated the rates of any of those little roads to see whether or not they were just and equitable? A. No, sir.

Q. Never investigated the Yreka road up there? A. No, sir; I don't think so.

Q. Did you ever investigate any roads up in my county? A. Where is your county?

Q. Humboldt County. A. No, sir.

Q. Have you investigated any roads; did you ever regulate freights and fares on any of the small roads in the State? A. As a matter of adjustment?

Q. Yes, sir. A. No, sir; I never did. Mr. Beckman did.

MR. MAHONEY: Each Commissioner is supposed to look after his own district? A. Well, Mr. Beckman is competent to look after his, and I consider myself competent to look after mine, and, as a matter of fact, I do it. You will find in my district—I don't think you will find a person who has ever entered a complaint that ain't satisfied to-day. But I went in for the proposition for an absolute and equitable adjustment. My talk with the Chairman of this committee was to the effect to independently settle the railroad question, and I have given him my ideas of doing it, and I don't think it ever will be satisfactory until that is adopted.

MR. SEAWELL: I understood from you that the Commission, in adjusting freights and fares for the railroad, took into consideration, as a basis to work upon, the cost of the road? A. To be based upon the cost of the road—either the cost or the fixed price, whatever price you agree upon.

Q. It is to be based upon the cost of the road—its value? A. Yes, sir; its value.

Q. And you went upon that basis? A. Yes, sir.

Q. And you have been prosecuting inquiries in that direction during the past six years that you have been a Commissioner? A. I have, to a great extent.

Q. And now you say that in all of the efforts that you have directed to ascertain the cost of construction or the value of these roads, it has all been unavailing up to this time? A. Here is the proposition. You may get information—I have of course been working from two stand-points.

Q. Do you think you know the cost and construction of railroads—do you think you could get at that? A. I don't know the cost of construction. If I did I could tell you in thirty—

Q. (Interrupting.) Well, in the six years that you have spent in investigating this question you are unable to-day to state to the com-

mittee that your efforts have been fruitful of any practical results—is that it? A. The Commissions that I have been on—the public sentiment has never justified until lately an attempt on the part of the Commission to ascertain these facts.

Q. You have been all the time—you stated in your testimony in chief that you went on there with one idea, and that you have been consistent and have prosecuted your ideas in that direction well, and after six years' services, now you are unable to state to this committee or to evolve as a matter of fact any facts upon which you can base a rate? A. That is true. Of course there is the Shively complaint, and in that complaint, or in the process of that complaint, it has been carried off on examination for Mr. Leeds, and the amount of knowledge he possesses on railroads, etc.—he was first put on by Mr. Shively to bring out facts, and he has been cross-examined by the railroad attorneys, which occupies considerable time, and the Commission has not concluded that yet, and when they do conclude, if they ever do—

Q. (Interrupting.) You think you will know then? A. I think I will know then about what they ought to be considered worth.

Q. As to the report of Colonel Morgan, you have verified a great many statements in his report, have you not, personally? A. Verified them?

Q. Yes, by actual inspection or demonstration—personal demonstration of the facts that he states in his report? A. Well, to tell you the truth, I have not studied Colonel Morgan's report close enough to pass a conclusion on it yet.

Q. Do you indorse his report now? A. No, sir; I do not.

MR. SEAWELL: Well, that is all.

MR. MCGOWAN: Let me call your attention to a communication to Governor Markham, on page 148 of the Thirteenth Annual Report:

"The Commission respectfully submits these matters for your official consideration, and asks that you give the subject your earnest study, and that you recommend to the State Legislature, in any extra session which may be convened, or at the next regular session thereof, the passage of such laws as shall endow the State Board of Railroad Commissioners with full power, and with all the means necessary, to regulate freights and fares, and make that body immediately and entirely responsible to the people of the State for their action or inaction in the premises. Yours very respectfully,

"JAMES W. REA."

Q. What laws do you want passed to give you more power? A. Did you read all that?

Q. Yes, sir. A. Well, I don't understand that.

Q. You say you want the Legislature to give you more power. I ask you what you lack now legally as Railroad Commissioner to make your power effective to regulate freights and fares? A. What do we lack legally. I don't know as we lack anything legally. We may lack the means of employing assistants—for instance, my idea was in the premises; here was my whole idea, was to have Colonel Morgan—

Q. (Interrupting.) What else did you want the Legislature to enact when you wrote to Governor Markham? A. My idea was—the idea of this, as I suppose it is; I have not read it through—was simply to have a law passed whereby we were empowered, or to have the power to employ bookkeepers or experts, and a fund provided out of which we

could pay them if the exigency should arise—for instance, Colonel Morgan's bill. His report was not what I expected, though. I expected that he would give us the cost.

Q. All you wanted was an appropriation bill? A. Yes, sir.

Q. You wanted an appropriation bill? A. We wanted an appropriation bill. I don't know, there might be something new that my attention was called to then, but I cannot think of anything new only the appropriation.

[Whereupon an adjournment was taken until half-past seven, Thursday evening, February 9, 1893.]

THURSDAY EVENING, February 9, 1893.

MR. MCGOWAN: Is there any member of the committee who desires to ask Mr. Rea any more questions?

MR. SEYMOUR: I was not here last evening, and I would like to ask the gentleman some questions, if the rest of the committee are through.

THE CHAIRMAN: Proceed.

THE WITNESS: I will say that the examination was not fully satisfactory to me last night, owing to the fact that my energies were engrossed in another department. I was assailed by an attorney which affected my character as a man, but the committee outlined the rules of evidence, and therefore I am relieved now therefrom.

MR. SEYMOUR: I understand, Mr. Rea, the powers of the Commission are judicial. Will you explain what you mean by that statement, and what executive functions you perform, or what you have performed? A. Well, I mean by that, that they are a judicial body in the true sense, and under the interpretation of the Constitution, but their duties can be exercised in various ways; but when you wish to render a decision I claim it must be based upon evidence that may be made legal. For instance, the reason of that question that came out—you were not here—was over a communication either defending the powers and duties of the Board or a communication sent to Mr. Leeds, wherein I claim that it was essentially a judicial body. My position has been this, and is, as I understand it—my understanding and interpretation of the Constitution are that the powers of judicial bodies are varied, and so it is with the Commission.

For instance, you take a complainant that is poor, say down at Fresno, whose business is his means of livelihood, and he has not any surplus to spare, and the rates are such that it will render it impossible for him to exist, and he writes a communication to me as a Commissioner—either privately or publicly—in that case I think it is the duty of the Commission to throw around him the protection of the Commission, giving to him its ability and its influence for the purpose of, granting him relief. My policy in those matters, as a matter of fact, has been to go and see the gentleman, find out the condition he was really in, determine the situation from his standpoint, what we would consider fair. Then it was my policy to go to the railroad people and lay his case before them. In case they would not accede to the judgment of him and me in the matter, he brought his complaint before the Board,

which I consider necessary, thereby developing the judicial powers of the Board. It is the duty of the Board then to notify the railroad company to show cause why it should not be done, and bring from them the facts, laying the burden of proof upon them, which will be brought before the Commission, and you can render a decision after that based upon the facts.

Q. Then, in other words, you exercise other powers than judicial powers? A. Yes, sir; and I claim that I have a right to. But when you come to executing those powers that you have exercised, you have got to do it in a legal manner in order to sustain your decision, and then it becomes ultimately a judicial body.

Q. Have you always exercised that power or that prerogative during your term in this Board—we will say in cases of such complaint? A. Yes, sir.

Q. The Board has? A. Yes, sir; and I have privately, which never gets to the attention of the Board; and those instances the files of the Commission will show—I suppose they will; in fact, it has been called to the attention of the Board, and it has been done without the formality of a complaint.

Q. As I understand it, you said last night, Mr. Rea, that you never fixed a schedule of freights and fares—I want that statement explained? A. I would like to go on and define a little further in regard to my power, so as to make myself consistent with last night. The occasion which drew out that suggestion was this. The Traffic Association, through its Manager, Mr. Leeds, contended that our powers were other than judicial. I took the position in that instance that our powers were judicial. I did that for the protection of an element which didn't come to the front in that contest. My belief after communication and talks, and my judgment was that the Traffic Association was one of the most powerful combinations of merchants that ever existed in the State of California, equipped with a Traffic Manager, equal in ability, if you please—that very document says so—to the Traffic Managers of the transportation companies.

The transportation companies having the evidence on their side, and equally equipped, each fighting for its own advantage, which, in my judgment, the advantage of either or the success of either was against the success of the people of California; it was against my constituency, and I represent the interior portion of the State. I represent the merchants of the interior, and if there is any conflict, which I think there is—I know some of the papers claim that is a fallacy, but, gentlemen, there has been many of them come to me and caution me, and many of them are weary of the San Francisco merchants, as much so as they are of the railroad men, and they have been in clutches of both in the past—the railroad and the merchants. Now, that being true, what was the position of this Commission? It could not lend itself to the railroad company and assume that independent character that was necessary for a just judgment. It could not lend itself to the Traffic Association and lend itself, if you please, to bring the railroad company to time and give whatever concessions they might want privately, which would not be made public, and the Traffic Association nor Mr. Leeds never treated this Commission fairly.

Therefore, as a department of the State Government it became necessary for this Commission to assume an attitude which could not be said

was in close alliance with either the railroad company or the Traffic Association; and believing that a complaint from the Traffic Association, with the machinery of this Commission at its disposal, with the ability of Mr. Leeds at its disposal, with unlimited finances, if you please, at its disposal, the railroad company would be on the defensive; it would be powerless, according to law and the powers of that Commission, to withhold any evidence that the principal of the Traffic Association might see fit to call for, and believing that it was the ultimate purpose of the Traffic Association, if their intentions were honorable, which at that time I only had reason to suspect, believing that they would come in with their complaint if they were honest, I myself assumed the position that they were judicial. That was a case where it was a fight between two conflicting interests, and I took that position that I might be able as a Commissioner to protect my constituents, and to protect myself as a Commissioner, and I think my colleagues agreed with me in that.

Q. Now, Mr. Rea, I asked you the question—you stated last night you never fixed a schedule of freight and fares, and I want that explained why you never have done so. A. Mr. Seymour, that statement came from me as a candid statement—came from me on the theory of a complete solution of my ideas—for a complete solution of the transportation problem in the State of California. You were not here, but I laid it down. I claim that the only feasible, legal, and just manner in which a railroad company can be regulated, is to find out the cost of its construction, or to fix a valuation upon its property, and then its operating expenses. In other words, to produce a statement of the condition of its business, and allow it so much per cent for its earnings. I claim that was the only basis upon which you could figure to ultimately reach that conclusion, and in the sense of fixing a tariff for the State of California. The Commission has not done so since I have been Railroad Commissioner, but when I say we have never fixed a tariff, we have fixed tariffs—we are fixing tariffs all the time—we have fixed tariffs, but we have never fixed a complete tariff over the roads of the Southern Pacific System.

Mr. Ostrom: I assume, Mr. Rea, from your answer a moment ago, that you have acted upon the assumption that both the Traffic Association and the railroad were mutual and equally antagonistic to the interests of the people that you represent. Is that so? A. No, sir; the railroad company not so much so as the Traffic Association. If I was correct of course I don't know. They won't tell me what their purpose was.

Q. You went on the assumption that both were antagonistic to the interests of the people? A. I went on the assumption that as a Railroad Commissioner in the interest of the people in the State of California, two powerful corporations, or one a corporation and the other an association, that I could not afford to put myself in a position whereby the people of the State would suffer, because they are both powerful, the corporation and the association, and I have not got to the inside of either one of them, and they were both on an equal plane so far as I was concerned; because the Traffic Association did not deal openly with me.

MR. SEYMOUR: I want you to explain to this committee—I will ask this question—Mr. Rea is the Commissioner who represents our district

on the commission; he has been reelected, and I feel that I ought to ask these questions in justice to Mr. Rea, and myself, and the people. Now, Mr. Rea, do you think it is possible for the Railroad Commission to make and fix a tariff rate or sheet on freights and fares? A. According to my ideas?

Q. Yes, sir. A. Do you mean one that will stay fixed?

Q. Yes, sir. A. No, sir; or any other State.

Q. Well, is it possible for you to fix a tariff sheet in full and make it equitable to the railroad company and the people, and then have the Railroad Commissioners—let them have all the facilities at their hands for getting information and their knowledge of railroad building, construction, etc.? A. I think with the machinery of the Commission, and with an honest investigation, and with their hands strengthened by the Legislature, we would be able to fix a rate that would be equitable and just to the people of the State, and also equitable and just to the transportation companies, perhaps for the time being. But generally my idea is that you cannot have a fixed rate—a rate that shall remain the same. That is according to my ideas.

Q. Explain what are the reasons for changing those rates. Suppose you made a schedule to-day, what would be the reason of changing it in two or three months or a year afterwards? A. Well, we will say that a man has one hundred thousand dollars invested—he is entitled to a legitimate percentage on that money. We will say that the grain in the San Joaquin Valley is fixed at a certain rate this year, and it brings in a revenue of say—well, say any amount you please. This year is very dry when this thing is fixed, and there is a very small amount produced. Now, next year there is a prolific yield of grain, and the grain will come in there tenfold, and the rate will have to be adjusted again. The revenue proportionately increased, the rate can be reduced. So a rate that would be fair to-day would be unjust to-morrow.

Q. Then your idea is to regulate rates by these individual complaints? A. Yes, sir; I think so; but to illustrate further—on fixed tariff that came before the Commission—to illustrate the soundness of my position, I will say all of the traffic managers of the transportation companies of the United States, known as the Traffic Association, fixed a schedule of freights, and it came up before our Commission, and I think there were in that schedule fixed two hundred and thirteen or three hundred and thirteen changes in one year; and in the month of December there was some twenty changes; and the railroad say these changes were brought about by the condition. It is the same on any railroad you take.

Q. Now, to what extent have you fixed your rates by percentages—can you give us any idea to what extent you have changed them. A. Well, in my district, a little north of you, is the Porterville road; that is a new road. There is an illustration of a complaint. These people complained with regard to their wood and their grain; not only their facilities to load the grain, but their facilities after it was loaded. They had only flat cars, and sometimes some of the sacks of grain would fall off; and there was no fixed schedule. I was down that way and happened to see the condition that they were actually in, and I saw the grain of the producers of that section being shaken off the cars—every shipment of eight or ten cars would lose probably four or five or six sacks of grain. I learned from the people there—Mr. Kerns, who is a great shipper from that country—

MR. EARL (interrupting): Mr. Kerns, of the Assembly? A. No, not the Populist. I don't know what his complexion is politically; but, anyhow, he has some eight or ten thousand acres in there, and he is a very large grain shipper, and his complaint was that he would bring his grain to the depot, and the cars would not be there, and maybe he would have to take it back again. So we called a meeting of the Railroad Commission to meet at Porterville. Here is an instance where there was no attorney before the Commission. We went there, and it didn't cost them a dollar. The Commission looked over the matter, and they wanted the rates fixed as on the main line—I think Mr. Beckman made the schedule—either the railroad company or he did; but, anyway, the Commission ordered certain rates to be established, which were, and which affected the rates all through that section and all over that line, and they were adopted by the railroad company. And, in justification of my position, which I assumed at the outset last evening, I insisted, when we came back, that they show cause why it should not be done.

Q. Now, did this complaint come to you in the shape of a legal complaint made out in legal form? A. Well, it first came from the individual talks I had with the people of that section, and then I got or suggested that they make out a sworn statement of their grievances, and there were a number of grievances—probably twenty-five grievances—and they were all adjusted, every one, to the satisfaction of the people of that country, and they are pleased now. I saw Mr. Kerns a few days ago—

Q. (Interrupting.) Well, I heard Mr. Litchfield give that illustration last night. I want some others. Have you had any trouble in Santa Clara? A. Oh, we had a great deal of trouble; we had big lumber interests down there, and we have reduced rates by our interference and suggestion, which, if they had not been made, would have come in the form of a complaint. But it is not my policy to create disturbances, but to produce results. I think I have done it pretty well. The rate was four and a half and now it is three. That speaks for itself on the lumber. Here, the other day, there was an individual complaint from a man that had a fruit-grader business. I don't know whether that was mentioned in the report or not. Well, this man shipped his fruit graders to Sacramento, and it cost him \$19 to Fresno and other points, and that was too much freight. It would run him down. The business—the fruit grader—was only worth \$55.

Q. It sold for that? A. Yes, sir; and he wrote me a letter, or the Commission a letter, I think, and it was referred to me. This was during the time of the Shively complaint, and I referred him to Mr. Richards, my attorney, and I looked into the matter, and I found that he ought not to have much over a five-dollar rate, according to my idea, to Sacramento, and proportionately to Fresno. Well, I suppose it was fixed up that way. Many and many of those cases can be illustrated. The other man's name was Hamilton.

Q. In your letters to the Governor, you indicate that the powers of the Commission should be strengthened by the Legislature. Now, what do you mean by that? A. Now, I will tell you what I mean by that. My idea is this: The result of the experience of the Commission in this State is, according to law, that they have no power to order a side track or to order the building of a depot, or to order and inspect, for instance, bridges. That is one thing that I understand in other States is a part

of the law, and has been sustained by the Courts in other States. And I meant for the Governor to recommend the passage of a law giving us that power. Now, in another instance which is before my mind, and which was brought up by the complaint, where conflicting and opposing interests are both trying to dismember and disrupt the power of the Commission, and therefore the necessity for the judicial power of the Commission is necessary as I understand it. While the law says you have the power to issue subpoenas and enforce your judgment, etc., there is no legislative provision setting forth how far we can go in that direction.

MR. SEAWELL: You must do that through the Courts. A. That is all right.

Q. Do you think the Legislature could pass an Act to take it away from the Courts, under the Constitution? A. You can strengthen that. You can add a legislative provision, and together with the legislative provision you can remove, in my judgment, all possible question of controversy. And here is another thing I think ought to be done. The Commission, if it becomes compromised, and falls between any of these conflicting interests, its utility is ruined. Therefore, if they have no attorney to keep them straight, they are in danger, and I think there ought to be some provision whereby they could employ an attorney.

MR. SEAWELL: Well, there are five or six Attorneys-General. A. Well, if there were five or six more I couldn't rest my reputation as a Commissioner with anybody that I don't know. He is an officer of the State as well as myself, and in a contest like this he might want reelection, and I could not afford to risk my reputation with him. In other words, I want one that I know is not leading me into a false position. I don't believe any man is competent to act as Railroad Commissioner if he has a string on earth around him. I think he wants to be an independent man, and if he is not, why he cannot carry out the provisions intended by the framers of the Constitution.

MR. SEYMOUR: Now I don't know as you have the powers, but do you think the Legislature of this State ought to give you power, for instance, to act on the petition of the people to maintain a depot, or to build a side track, say? A. I think so, if in the judgment of the people they wanted it.

Q. Do you think the Commission could be given that power? Yes, sir; I think so. I am always brave enough to tell the truth. It was a principle that was instilled in me by my ancestors, and here is a fact: It does not make any difference whether it is a railroad company, a traffic association, or an individual, when his finances are at stake he has an eye single to the mighty dollar. Now, if you do not have these provisions to strengthen the Commission, and if they are not strengthened by a good healthy public sentiment, the Commission is naturally working at a disadvantage. And what I was going to say is this: That the contest going on between the railroad company and the Commission since I have been a member of it, many of the poor men who come to me or Commissioner Beckman, not so much to Mr. Litchfield, because he is in San Francisco, but our district is in the interior, and they generally come to the interior Commissioner, and those people who have confidence in their Commissioner, they come and talk to him without antagonizing him, so he will meet the antagonism of the railroad company. A great deal can be done, but the railroad company will always

oppose any interference with their business, and I tell you why. As a matter of fact it is a very sensitive thing to the commerce of the country, and to the railroad, also, to change your tariff. You are talking about the introduction. Last night I was asked if I ever set forth a new tariff. The introduction of a new tariff revolutionizes the interests of the State and the railroad, too. It costs a great deal of money for the railroad to adjust these tariffs, and it costs the producer a great deal unless it is adjusted to his interests, and I, as a Commissioner, would be very careful what I did. I would want to know that I was pretty near right before acting on these tariffs.

Q. Have you ever attempted to ascertain the construction and fixed charges, and earnings and cost of operating the railroad with a view of making a revision of the tariff—have you made a systematic examination? A. In individual cases we have. There is a complaint—the Shively complaint—and that has brought out the coast division—the cost in the Porterville case, and I think that if the Commission had been let alone, that by this time we would have them all in—

Q. (Interrupting.) Has Mr. Leeds or the Traffic Association ever made to the Railroad Commission of this State, either individually or as a Commission, a verified complaint? A. No, sir; but they have been invited to do so, Mr. Seymour. They have been invited to do so, not only by Mr. Shively, but there is a complaint before that Board now, from one who neither belongs to the railroad company or the Traffic Association, but who does claim that the Traffic Association has tried to ruin him in his business, while this Legislature has been in session, and tried to bankrupt him or to throw him into bankruptcy, when he has over twenty thousand dollars, and he is a townsman of mine, and I would like to have you subpoena him. He invited the Traffic Association—the attorney of that association—to join hands with him, and develop every fact that was within their knowledge or power.

Q. Do you think it is possible, Mr. Rea, for the Railroad Commission to keep in mind, or to change this tariff only as complaints are made? A. What is that?

Q. Is it possible for you to have any correct knowledge of these tariff sheets, only as it is brought to you by individual cases? A. Oh, yes, it is possible.

Q. Is it an immense job to go over the entire thing? A. Yes, sir.

Q. Take a year? A. Yes, sir; but we ought to have the means to employ assistants. That is another proposition where it shows that we could be strengthened by the Legislature. The railroad company claims, and justly, too, in my opinion, that the Commission have no right to say to the railroad, "Drop your business and put your clerks to work—put the clerks to work to satisfy our whims, or for a demonstration of our idea," and therefore this Commission has to pay for it themselves. Therefore, the Commission goes to the railroad company and says, "We want to find out the cost of the road, and we want to look at the books," and the railroad company says, "Certainly; anything you want, you can have. Here is the department open for you." But there are three hundred and fifty clerks working there every day, and you can turn a Commissioner loose in that department, and it will take him a long time to go through, and they may tell you that some of the books are lost or something of that kind, but if you have an expert—and here is the point right here, and it is the point where I

strained my authority a little, in my opinion, but I maintained it without the means to employ clerks, and I insisted on the railroad company doing it. Well, under the circumstances, and with a great agitation at the time, they didn't want to be in a position of refusing to do it, but I don't think they ought to be compelled or made to do it, because it would cost ten or fifteen thousand dollars to get what we want, if we got at it at all.

Q. In view of all these facts, I suppose that was the reason that you engaged Mr. Morgan to make this investigation, to find out the cost of maintenance and equipment—in fact, all questions connected with the railroad? A. With reference to Colonel Morgan, I explained last evening, that here was Mr. Leeds on one side, and Mr. Stubbs, if you please, on the other, and the Railroad Commission in another position—if they were honest men, as they were, and as I claim they were—I contend they were. Therefore, I say that that Commission needed a civil engineer, and in order to carry out an idea that I had always entertained, I began to look for an expert, and Colonel Morgan, by chance, happened to be in the city, and I found out what his business was, and I was introduced to him. Of course I had read of him in the Patterson Committee—in the Senate Committee, and his report there; and he was out here and I talked with him, and I found that he was more or less familiar with these roads, and he told me then that he was out here for the purpose of investigating these roads, with the object of reporting to some moneyed people in Europe, whether or not they could afford to loan money. I think it was in connection with the Southern Pacific Coast Railroad—they wanted to sell it. But at any rate, Colonel Morgan wanted his money. Well, I didn't feel as though my duties to the people required me to put up maybe ten or fifteen or twenty thousand dollars, and I didn't know but what it would cost that—the investigation. But I told Colonel Morgan that I would recommend his bill to the Legislature if it was a reasonable bill, providing he was willing to undertake it, he giving me the assurance that he was not under any obligations to anyone, and that he would give me a report based upon facts, and a report that was true, and a report that he could stand upon, and that I could stand upon. What I wanted was the cost of construction, etc., and that part didn't come in the report; whether it was by accident or otherwise, I don't know. I did that for the protection of the Commission, so that they could have all the facts and bring to bear every fact, and it was my purpose at the conclusion of that investigation to present to the people of this State a statement of facts which would be considered standard literature on railroads, and I believe I was competent to do it.

MR. SEYMOUR: You believe that he was able to do so? A. No; it was my report that was to come later, and all of these other facts were to be verified. It was for a matter of verification, and I could ask him questions. But as far as Colonel Morgan's report is concerned, I am not in a position to indorse it to-day; neither am I in a position to reject it. But I will say, gentlemen of the committee, that at the conclusion of that Shively complaint, that I will be competent to tear it to pieces, or I will be brave enough to indorse it. That is my position.

MR. EARL: What was it you said, Mr. Rea, in regard to Mr. Leeds asking the Southern Pacific Company to get permission to take the management of the Traffic Association? What was that? A. I didn't give away all of that, and I guess I had better keep a little of it back.

MR. SEYMOUR: Give it all. A. Well, everything goes, then. At first I looked on Mr. Leeds and this agitation as a god-send. That the time was coming at last when I could realize my ambition as far as Railroad Commissioner was concerned. That all of this would be brought—Mr. Leeds' preliminaries would be brought before the Commission. I didn't consider anything, only that he was creating a public agitation, which I really encouraged myself as a matter of fact, but it became serious with me when he refused to sign his complaints. I saw that the time was coming when Mr. Leeds and I would have to break, so I went to him and I assured Mr. Leeds, and said, "If your purpose of the Traffic Association, or your ultimate purpose, is the revision of the railroad tariffs or schedules of the State, with the object—ultimate object—of doing justice to everybody connected, both in the interior, San Francisco, and railroad companies, I am with you, heart and soul, and I assure you you will have an ally in this Commission stronger than any one in the Traffic Association." And he says, "I have nothing against the railroad company. I don't care anything about the regulation of rates. All I want is agitation."

Q. You were saying last night—you said that Mr. Leeds asked the permission of the railroad company and telegraphed to Mr. Stubbs—what was that? A. Oh, he says, "I am not unfriendly to the railroad company. I even asked their permission to accept the position of Traffic Manager of the Traffic Association." Well, one day afterwards I called his attention to that, and it was denied some way, but I think it was—the "Examiner" man went down to the railroad company and found the telegram from Mr. Leeds to Mr. Stubbs. It was verified that way. That is all I know about that.

MR. MAHONEY: What is the history of the condition of the Shively case so far as you know? A. The history of the Shively case, as far as I know, is this: Mr. Leeds had refused to put in a complaint. These communications to the Traffic Association and to Mr. Leeds had been filed and printed in all the papers, and Mr. Porter had put in a complaint and withdrawn it, and Mr. Shively got it into his head that he would put in a complaint which was in keeping with my ideas, but I didn't consult him on it at all, and he came to see me. Mr. Richards came to me in the meantime though—my attorney—and asked if the improvement company, which I am connected with—he had been talking with Mr. Shively, and he asked me if I had any objections to his becoming the attorney for Mr. Shively, and I said, none whatever, if he thought Mr. Shively was an honest man, and would have an honest investigation. Mr. Shively saw him, and he had his complaint, and I assured him that he would have an honest investigation so far as I was concerned, and I said I was satisfied so far as the Board was concerned. So he gave me that complaint the next day, or maybe that day, and it was filed, and we proceeded to the investigation. Mr. Shively was opposed by every interest—by the press, by the Traffic Association, and railroad company. That is the history of it as it has progressed and proceeded up to the present time. Now, there has been a great deal of information developed there, and it is still in progress.

Q. Did Mr. Shively or Mr. Richards have any connection with the railroad company, that you know of? A. No, sir; but on the contrary, while I cannot swear to it—but I will swear that I believe it is true—that Mr. Richards didn't know a person connected with the railroad

company, and I don't believe Mr. Shively did when that complaint was filed.

Q. Did you know anything about this complaint till it was filed? A. Yes; probably a few days, or may be a week before.

Q. How long have you known Mr. Leeds? A. Well, ever since he has been coming before this Commission; I don't know how long that is, about six or seven months.

Q. Was he engaged in any business when he arrived in the city, to your knowledge? A. Well, he had been discharged from Mr. Gould's road, that is all I know about it—the Missouri Pacific. The railroad people would know, I don't know exactly which one, or the Traffic Association people would know. Mr. Gould discharged him, not because he broke the railroad rules, but because he broke the rules and lost the traffic. If he got the traffic I guess Gould wouldn't mind about the rules, and wouldn't discharge him.

Q. Was he employed here in California by the Traffic Association? A. Yes, sir.

Q. For what purpose? A. That is something that I don't know, and never could ascertain from Mr. Leeds.

Q. Was it for the interest of the people of this State, or was it in the interest of the railroad company? A. Not in the interest of the railroad. If I were going to swear to the best of my belief, I believe that he was actuated—in fact he told me himself, that he was ruined with all the railroads, and I think—in fact, he told me, that he had the members of the Traffic Association in writing, and that they could not go back on him, and I think he assumed that position that he did for the purpose of getting back.

Q. Was it for the purpose of burning up the railroads, or to get in himself? A. Well, Mr. Mahoney, from my knowledge of life and experience, and as Railroad Commissioner, and every other experience, I think it was for the purpose of hurting them, so they would pull him off.

Q. And send him home? A. Yes, sir; that is what I think.

MR. SEAWELL: I want to ask you one question: You are elected from the Third District? A. No, sir.

Q. The Commissioners are? A. Yes, sir.

Q. In hearing complaints where you do not enter upon any extended investigation, do you usually leave them to the Commissioner in whose district such complaints are made? A. Yes, sir; I do; I wouldn't bother with Mr. Beckman's district, or Mr. Litchfield, and I would feel offended if they did with mine. That is, simply if I thought they would override what I thought was according to my idea of right.

Q. You realize you are a State Commissioner? A. Yes, sir.

Q. And your jurisdiction should extend over the State? A. Yes, sir.

Q. Do you think a man should punish his enemies and reward his friends simply because he is a member of the Board of Railroad Commissioners? A. If he rewards his friends and punishes his enemies he ain't fit to be there. I ain't got absolute jurisdiction over my own district, but I like to establish the fact that I have more right in that district, as it is my own; but when it comes to a legal proposition I am a Commissioner the same as a Congressman is.

Q. You exercise, in connection with your other powers, judicial functions. Is it your idea that you should altogether, in every case

where a complaint is made of abuse, is it your idea that you should all determine upon the course to pursue for the benefit of the people, or that one man should do it? A. The Board has the power, and I have no more right than the others.

Q. Well, as to your procedure. Here is a complaint in your district before the Board; say it is before the Board? A. Well, then, it ain't from my district. If it is a legal complaint, filed before the Board, then my colleagues are on an equal par with me.

Q. Does the disposition to accord a degree of courtesy to the member from whose district a complaint is made, control you in your judgment, and make you defer to his judgment? A. Somewhat, unless it is a complaint. If a complaint comes before the Board—well, I don't think my colleagues but once decided a matter in my district that I didn't vote on at all.

Q. Have you ever made a comparison of transportation rates in this State, and compared them with other States? A. Yes, the Board has; Mr. Beckman has done that.

Q. And so far as cost of construction is concerned, I believe you indicated last night you didn't know anything about that, and didn't think anybody else did? A. Well, all the roads in the State—there are some that we succeeded in getting, but I was speaking last night as a general proposition—to know it all, we didn't, but in the course of this investigation in the Shively complaint, and other investigations, we have got at the cost of two or three of the divisions.

Q. Do you go and sit as a body—Board, in different parts of the State, to hear complaints? A. Yes, sir.

Q. And give notice? A. Yes, sir; published in the papers of the county, according to law.

Q. The rates of transportation for passengers and freight, they are less on the Southern and Central Pacific—less than on the other roads? A. Yes, sir; the small roads run up into the mountains. They have not so much traffic.

Q. Have you regulated fares and freights on any small road in the State? A. Yes, sir.

Q. Which one? A. The Porterville branch.

Q. How long is that? A. A branch of the Southern Pacific—that is about 114 miles.

Q. On any small detached road? A. Well, the small San Ramon Valley road.

Q. Have you tried to regulate the rates of the Central Pacific and the Southern Pacific, on the main line? A. Well, tried to regulate them—they have been regulated from time to time.

Q. Well, do you take the rate-sheets from the Central Pacific and the Southern Pacific, or do you make them the basis of the cost of construction and expenses? A. Well, my idea is that you cannot arrive at an absolutely just conclusion without you know the cost of construction. That is my opinion, and in failing in that I take Mr. Leeds' position—

Q. (Interrupting.) Well, now, as a matter of fact, you being authorized—having judicial power—authorized through the Courts to enforce processes, why in the world can't you ascertain the cost of these roads? A. You can; and if the power of the Legislature will get behind that Commission, I will guarantee it.

Q. Well, what do you want? A. We want the provisions that are necessary to provide for the expense of those cases that are brought before the Commission.

Q. Then you want an appropriation? A. Yes, sir.

Q. Would that be the necessary provisions— A. (Interrupting.) We want to employ experts and such assistants as we might want.

Q. Don't you think under the organic law, as it stands to-day, that you can cite persons to appear, and have them punished for contempt if they fail to come before you? A. Yes, sir; but here is a case in point. Mr. Leeds goes out of the State, when this Board is sitting, and he goes without consulting this Board, and ignores them entirely, and comes back when he pleases. I think that there should be some provision made whereby he should be made to appear.

Q. It would be difficult to reach Mr. Leeds in New York? A. Yes, sir.

Q. You would enforce the process through the instrumentality of the jail? That is the way they would be enforced? A. Yes, sir.

MR. MAHONEY: Is there any other State in the Union that a Railroad Commissioner has more power than in this State? A. Yes; in the way of these provisions that I speak of.

Q. So that your idea is to clothe the Commission with full power— A. (Interrupting.) Yes, sir; I think this Commission has all the power that is necessary, so far as that is concerned.

Q. Now, where there is any trouble in Mr. Beckman's district with regard to freights and fares, do you sit on that as a full Board? A. Yes, sir.

Q. And come to conclusions to reduce the freights or fares—whatever it may be? A. Yes, sir; and we go back to San Francisco, and we have all the evidence with us, and we sometimes take the evidence of the complainants. We have our stenographer, and when we see that there is going to be trouble, and that we are going to be assailed, we have to surround ourselves with a safeguard and get ourselves right.

Q. As a Railroad Commission, has the railroad company in any way ever interfered with your body with reference to the reduction of fares and freights? A. They have—yes; they have since I have been Railroad Commissioner. If you make an order that manifestly interferes with them, they ignore it; and therefore is the necessity of getting your processes.

MR. MCGOWAN: Now, you say one of the reasons why you didn't regulate fares and freights in California generally was because those men who knew all about it in the railroads were busy, and the railroad wouldn't give up their work for that service? A. No, sir.

Q. Was that the reason? A. No, sir.

Q. Didn't you so state to Mr. Seymour? A. Yes, sir; I was giving him a little of it—

Q. Now, didn't you state, as a matter of fact, that that was one of the reasons—that you could not take those men away from the railroad offices? A. Yes, sir; that is one of the reasons why we want provision made for the Board. I don't believe that as a legal proposition the Commission or the Legislature can say to the railroad company, "Put your men upon this proposition, or that proposition that we wish to demonstrate."

Q. Then, that is one of the reasons why no effort was made for the general revision of freights and fares? A. No, sir; not in a general way.

Q. Well, that was one of the reasons why you didn't make a general revision? A. No, sir; that was for the reason—

Q. (Interrupting.) That was one of the reasons, because you could not get the men—didn't you so state to Mr. Seymour? A. He asked me what was the reason of my communication to the Governor, and I said, having now power to—

Q. (Interrupting.) Do you believe now that you could not get those men out of the railroad offices to go and give you the desired information? A. They have done so.

Q. Do you believe that could be done? A. There is a question in my mind.

Q. Did you ever read this in the Constitution: "Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroads, and other books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpoenas and all other necessary processes; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, to take testimony, and punish for contempt of their orders and processes in the same manner and to the same extent as Courts of record, and enforce their decisions, and correct abuses through the medium of the Courts." A. Yes, sir.

Q. Didn't you know then that you had the power and authority to bring papers and processes before your Board? A. Yes, sir.

Q. Why didn't you employ it? A. We have.

Q. Against the Central Pacific? A. Yes, sir.

Q. In what case? A. The Shively case. They were brought there by the wagonload.

Q. In any other case before the Shively case? A. Yes, sir.

Q. In what case? A. In the Porterville case.

Q. Any other cases besides the Porterville case? A. In the Northern division—I think along there.

Q. Well, why didn't you employ the same process, and make the same order, to determine a general rate, and fix the cost of construction? A. We are just doing it now.

Q. You just got down into position to fight the railroad now? A. I am not fighting the railroad.

Q. Now, don't you think there was a long time wasted in the preliminaries? A. Mr. Chairman, will you listen a moment—

Q. (Interrupting.) Do you think it is a long time, or do you think it is a short time? A. Shortly after my—

Q. (Interrupting.) Do you think it was a long time, or a short time? A. No, sir, and I am not fighting the railroad. I do not wish to be put in that false position. I understand my oath of office means that if every man in the State of California was to appeal to me to regulate rates, so as to do an injury or a wrong, it is my duty to stand firm against them all, and do justice to the people and the railroad companies. But I am not answering your question. I was elected Railroad Commissioner, and I started right at it, but it was about six or eight months—it was about six or eight months when I made a general reduc-

tion of 10 per cent along the Northern Division, and the papers assailed me, and the people came to me in a body, and I was given to understand that the Commissioner from the Third District had better wait until the people asked him, before he proceeded on his own account and made reductions. "We know what we want, and we are brave enough to ask for it."

Q. Now, you say in the commencement of the Shively case, was the point where you first commenced to fight them? A. No, sir; I was not fighting them. I was doing right.

Q. Well, you commenced the general regulation of freights and fares, and I asked you if there was not a long time wasted in preliminaries; what is your answer to that? A. My answer to that is that an official who represents a constituency has got to have a healthy public sentiment behind him before he can afford, sir, to attempt to introduce a schedule that will revolutionize every business interest in this State.

Q. And still you are not answering the question I asked you—if you don't think that was a long time wasted in getting to that position? A. That might apply to me, but not to my colleagues.

Q. Do you, or do you not think so? A. Well, I do not think so, because the public sentiment would not justify it.

Q. You don't think so? A. No, sir.

Q. Have you or any other member of the Commission ever attempted to regulate freights or fares for any transportation company in this State other than a railroad company? A. No, sir.

Q. Never have? A. Well, not that I can call to mind.

Q. Do you recall to mind that you ever investigated the subject of freights and fares of any transportation company other than the railroad company? A. No, sir; I do not.

Q. Do you know whether you ever paid any attention to freights or fares of any corporation other than railroad corporations? A. What do you refer to?

Q. Transportation companies of any kind? A. Well, if you refer to steamship companies—why of course that was in the Courts, and we had nothing to do with that because the Courts decided that we should not interfere with those companies—steamship companies that run out three miles—

Q. (Interrupting.) I mean local concerns—transportation companies of any kind? A. Do you mean by water?

Q. Transportation companies of all kinds other than railroad companies? A. I never have that I can think of now.

Q. You know since you have been Railroad Commissioner that it was a part of your duty? A. No, sir.

Q. You knew that the Constitution gives you power to regulate all transportation companies, even stage lines? A. I understand that, but I never had a complaint from a stage line. This was never called to my attention.

Q. Now, do you claim that it would be illegal for you to establish a law establishing freights and fares without any testimony? A. Yes, sir.

Q. Then why did you pass orders without evidence? A. Well, we had the evidence and the facts. I told you why I did it. There is an explanation again of the procedure which leads up to the proposition that we are a judicial body.

Q. You recollect that Mr. Litchfield, in his testimony, stated that some

time ago, without evidence, he came before the Board and passed an order there without evidence? A. Not without evidence, I don't think.

Q. Now, you say it is illegal to proceed in that way? A. Yes, sir.

Q. And still you did pass those orders without any evidence? A. Well, the Board can pass an order that indicates the wishes and judgment of the Board. Now, after they have looked into it, and I don't think that Mr. Litchfield ever did a thing without looking into it, and I know I never did, and I know Mr. Beckman never did so, either.

Q. But you had no evidence upon those orders which you made, had you? A. What orders do you refer to?

Q. Any order that Mr. Litchfield came in there with, and you all passed. A. I don't think that he had—

Q. If he so stated in his testimony, is it so?

MR. LITCHFIELD: I would like to correct my statement. I never made that statement. I have never done so without legal evidence.

MR. MCGOWAN: Have you ever passed any order without any evidence being presented to the Board? A. No, sir; I never have; not without securing all the evidence I could, and making up my mind. I have passed an order or two indicating the wishes of the Board, that is all, and if they wouldn't accede to it, then I would proceed in a legal manner, and enforce my decisions.

Q. Now, in your answer to Senator Seymour, you stated that the Board would be effective, and you would be a Commissioner of results, if your hands would be strengthened by the Legislature. What do you mean by that—"your hands strengthened by the Legislature?" A. Well, I mean this—

MR. SEYMOUR (interrupting): Do you mean if the Legislature would relieve you of your office? A. Well, I wouldn't be a Commissioner then—I would be a Commissioner of the past. I mean by that—we will just suppose a case; here is the Shively complaint calling for all this evidence, and they have lots of it. If you will look into it you will find that they have, too. Suppose they would refuse—you know here is a little question which came up between us, Mr. Chairman, and you got off wrong on it.

MR. MCGOWAN: Yes, it seems I am getting off wrong all the time. A. Well, all the same you are wrong sometimes, and sometimes right—

Q. (Interrupting.) Well, now, get down and answer the questions. In what manner do you want your hands strengthened by this Legislature? A. In whatever manner that this Board wishes to be strengthened. Suppose we want an expert to go over the books of a company?

Q. To go over the books of the company? A. Yes, sir.

Q. Can't you ask the employés of the company? Why do you want an expert when you can do that? A. Well, I don't know as that way is a healthy one. Let me tell you about Shively—

Q. (Interrupting.) Well, never mind about Shively. A. Well, there is a great deal about Shively. There is a system of bookkeeping up to date kept by the Southern Pacific Company, whereby it has been developed that it will cost a great deal of money to run things, or they claim that it will, at least, and swear that it is so, and I don't suppose they would swear to a lie—

Q. (Interrupting.) Do you mean to insinuate that they have false books? A. No, sir; I have no reason to assert such a thing. Mr. Leeds swore that they were correct, and he swore that they were not, but I am willing to believe—

Q. (Interrupting.) That they are both? A. No; I have no reason to do so. I might be able to demonstrate that they are correct, or—

Q. (Interrupting.) By what means do you want the hands of the Commission strengthened? A. To give us the power of employing officials—experts to verify the books of the railroad company, and to demonstrate the cost of construction; we will say, for instance, in any department that we see fit.

Q. Is there any other means besides this expert that would be necessary to obtain the cost of construction which you desire? A. Not unless it would be to strengthen us in regard to our powers as a Court—the power of punishing for contempt.

Q. Is there any other respect in which you want to be strengthened? A. It don't occur to me now.

Q. In what respect are the powers of the Commission defective? A. I don't know that they are defective.

Q. Then why do you want the Legislature to strengthen them, if you don't know? A. They are defective in this, that we have to go and get authorization from the Court in the making of processes, and we have to get the Attorney-General of the State, and one time while I was on the Commission the Attorney-General didn't have time to come.

Q. Why didn't you go and get the District Attorney of the county? A. We did, and he quit after one time.

Q. Are there any other respects in which you want your hands strengthened? A. That is all I can think of.

Q. Why do you want your hands strengthened with an expert when the Constitution gives you the power to bring into Court persons and papers? A. For the simple reason that their books are kept in a certain way—a general system of bookkeeping. Now, suppose we want to segregate the Northern Division, or take the cost or the actual income of the Northern Division—

Q. (Interrupting.) Then, the reason is that you do get the books, but that you wouldn't understand them, and you want an expert who does, and is able to determine from them? A. Not exactly. We could understand the way they are kept, though the railroad company do not wish to keep them the way we want them kept. We wish to know the actual income from that Northern Division, and we would keep it as a whole system, so we could refer to papers and regulate the system of books—we want a system that will allow us to do this.

Q. Why didn't you do that if you had a system to adopt—submit it to the railroad company—why didn't you do that in the past? A. Because I never got so far in the depths of investigation that I saw the necessity of it until lately.

Q. Well, you knew that you couldn't understand their books some time ago? A. Oh, yes, you can understand the books; it is the system.

Q. Why didn't you establish a system of accounts for the railroad? A. We did. That is established in that way. They asked permission of the Board.

Q. And they were given it? A. Yes, sir.

Q. In the way they are keeping them now? A. Yes, sir.

Q. Then why can't you understand them? A. We can understand them, but they don't bring out segregated facts. They keep them as a system.

MR. SEAWELL: The Chairman wants to know if the books are not

kept on the system that there is a segregation that will enable you to establish rates from the books—he wants to know why don't you establish a system by which you can determine that and exercise it? A. We have that power.

Q. Why don't you exercise it? A. Here is the Shively complaint—now the evidence that is being called for is what is the income of the Coast Division, we will say; they will say, "Gentlemen, we cannot tell you, because we keep our books so and so." Well, suppose we ask them to change, which we have, and which they have changed for us in this very case—then it would be necessary to have a recasting of the books.

Q. I understand this to be the fact. You stated that you wanted experts in order to make segregations of the accounts, in order to show to you the earnings of the several divisions of the railroad, and from that you can determine the cost of construction and the income. Well, why have you not adopted and enforced a system of bookkeeping for the railroad company that will enable you by a disclosure of their accounts to find the facts that you desire to ascertain, in order to enable you to fix fares and freights? A. I am speaking for myself now, and not for the Commission. The reason, I presume, is—and this is only a proposition that occurred to my mind and which was brought out in this investigation—that it would make it easier and more satisfactory to me, personally, if we could get at that system of accounts that I suggest, and to get at that system it would be necessary to recast their books. We kept the officials of the railroad company busy for a week or ten days, and I suppose if they would refuse to do so, we have not the power to make them.

Q. Why have you not the power to compel them to adopt a system of bookkeeping? A. You cannot make them—

Q. (Interrupting.) Go back. Why didn't you do it two years ago? A. The occasion didn't require it. I don't know as it requires it now. The occasion does not require it now.

Q. Do you think, as a Railroad Commissioner, you ought to consult their interest with reference to the cost, or to consult the interest of the Railroad Commission in the interest of the people? A. I don't see any interest that the people had at that time, and the only interest that they have now is in this case.

Q. What difference did it make to the people of the State of California whether the railroad company changed their books or not? A. Well, I don't think it is my duty to harass the railroad company when it is not necessary. I made my fight on those lines and won it.

Q. Then you don't know how material it might have been to the people of the State of California if they had adopted a system that would have enabled you to know what the fares and freights were? A. I don't think it would affect their interest very much.

Q. Since you have determined that this system of bookkeeping has not been satisfactory— A. (Interrupting.) It has been perfectly satisfactory to me, as far as their bookkeeping was concerned; but here came the point in the investigation, to demonstrate particular sections.

Q. Well, you had some fault to find with the system of bookkeeping. Now, what was it? A. Let me say, I am willing to explain that it is my lack in expression.

Q. No; you lack nothing in expression. What was the fault with their accounts by which you were prevented from understanding them?

A. There is no complaint against the railroad company. If there was any complaint at all you can put it on my shoulders, and not upon the railroad.

Q. For what reason were the accounts not satisfactory? A. For the purpose of determining the cost—or not the cost, but the income of a particular section or division of road.

Q. Well, why didn't you direct them to make a system that would show the cost of operating expenses of a particular division of the road, and income, too—why didn't you do that? A. Because the occasion never required it, and has not yet; but I see the danger ahead, and it might require it, and if it should arise we would be full-handed.

Q. And for two years last past you have been looking to the revision of that and other questions which have been unsatisfactory in that respect, and have been prevented from arriving at the proper determination of this question— A. (Interrupting.) I will tell you why; because you don't understand me—

Q. (Interrupting.) It is to be regretted—may be the mention of books has confused us. Now, can't you give it to me in a segregated form, like the manner in which you got it from the railroad? A. No, sir; I will give it to you the way I get it from the railroad.

Q. Why didn't you prescribe the manner in which it would be satisfactory? A. It was perfectly satisfactory.

Q. It was perfectly satisfactory to you, and yet you could not determine what the different parts of the road earns, the different divisions? A. Yes, sir. My private business I have conducted in certain lines, and have seen it was unsatisfactory in some cases, and sometimes it is conducted at an expense to myself; and the railroad company, as a system of railroads, have a system of keeping books which is precisely what they want—

Q. (Interrupting.) All right, we will leave the books in oblivion. Now, you said something about not having ample power, and seemed to think the Legislature should do more to help the Commission out. I read from page 15: "When jurisdiction is by the Constitution conferred on the Board of Railroad Commissioners, all the means necessary to carry it into effect are also conferred upon said Board; and when, in the exercise of jurisdiction within the purview of the authority conferred on said Board by the Constitution, the course of proceeding be not specifically pointed out, any suitable process or mode of proceeding may be adopted by the Board which may appear most conformable to the spirit of the Constitution." What more power do you want than that? A. Where is the power of the Constitution that we have to construct a depot?

Q. It gives you the power to fix rates—fares and freights. A. The regulation of fares and freights is not the power to build depots or a switch.

Q. You never asked the Legislature to give you the power? A. No, sir.

Q. You compelled the railroad to build a side-track at Porterville? A. We did not compel them.

Q. What more power or authority do you want to regulate freights and fares than is conferred on you by the Constitution? A. None in the world, and I agree with you—it is full in every respect.

Q. Did you ever try to get a depot for anybody in this State? A. Yes, sir; and succeeded.

Q. Where? A. Watsonville.

Q. Any other place? A. Yes, sir; on the Porterville branch, and succeeded; and in San José, and about to succeed in Santa Clara, and a number of places.

Q. And this you claim was all done by the good grace and good will of the railroad company? A. It was done by the good grace of the railroad company—that is, the necessity of it was shown by argument, perhaps from me and other people in the community.

MR. MAHONEY: Did you ever get a railroad at Milpitas? A. No, sir.

MR. MCGOWAN: That is all.

MR. REA: I would like to say, if this committee is about to impeach this Commission—I would like to state to the committee that so far as the filing of this Shively complaint is concerned, in your findings I wish you would exonerate the railroad, and you can exonerate the Traffic Association, and exonerate my colleagues from complicity in said complaint until it reach the Board. But if there is anything wrong with it you can condemn me.

So far as this being an honest proceeding and investigation is concerned, for the purpose of demonstrating the railroad's situation, I want to say to the gentlemen of this committee, and I say it without fear of contradiction—successful contradiction—that there is danger to the interests of the people of this State by the exercise of that power which is given in this amendment to the Traffic Association—this proposed amendment.

I represent a constituency; I have confidence in them, and I believe they have in me. I have not been a demagogue. I would rather be convicted of a crime than be that. I believe it is a crime to play upon the interests of the people of this State with the pretext—

MCGOWAN (interrupting): Mr. Rea, if you want to defend your position, you may sit down and take your time, but we are not here to listen to arguments upon political matters.

MR. REA: I will sustain myself, and the people will sustain me, and whatever political party takes up the principles that I have outlined to you this evening you will find that the adherents will come out—

MR. MCGOWAN (interrupting): Does Mr. Beckman wish to give his testimony now?

MR. LITCHFIELD: I would like to take the stand to correct testimony that you state was given by me. You said that I stated we had made reductions without evidence.

MR. MCGOWAN: We can not go back, Mr. Litchfield, for that.

MR. LITCHFIELD: I will state that if I did make such a statement it was wrong—I think it was without filing a legal complaint. I feel the rate-sheets themselves are the evidence in this case that I speak of, evidence sufficient in my mind.

TESTIMONY OF WILLIAM BECKMAN.

Sworn.

MR. MCGOWAN: How long have you been a Railroad Commissioner?

A. Two years and one month.

Q. You were not a railroad man—that is, you were not in the business of railroading at the time you were elected? A. No, sir.

Q. And claim no expert knowledge on the subject? A. No, sir.

Q. No more than ordinary affairs? A. No, sir.

Q. What effort have you made individually since you have been a Railroad Commissioner to regulate generally the freights and fares in the State of California? A. My first move was to introduce a resolution to meet every week. The old Board used to meet once a month, and we met every Monday. And the next step was to look over the schedules of the different railroad companies, and ascertain if they were making too much money or too little, and also comparing the rates of California railroads with railways in other States—and I have spent a great deal of time on posting myself on railroad matters, so I imagine to-day I can talk quite intelligently on those matters, where I could not do so two years ago.

Q. What regulations have you made during the time you have been in there? Q. About reducing fares?

Q. No, regulations—not necessarily reductions. A. Well, I have to go to the books and papers for that.

Q. Can't you state from memory? A. We regulated the Placerville road.

Q. On what? A. Cattle.

Q. You did not reduce them on wood—the rates? A. No, sir.

Q. Isn't the carrying of wood considerable, as compared with the other? A. But wood was reasonable, so far as the judgment of the Board was concerned—so far as the railroad was concerned, to get a fair compensation, but cattle was too high.

Q. Is it true that there is very little carrying of cattle? A. I don't know; there were no corrals there. I know that they were driving cattle alongside of the railways from Elk Grove to Shingle Springs.

Q. What other regulations did you make while you were a member of the Board? A. On the Porterville, to the main line.

Q. Did you reduce the freights and fares upon any small road in the State? A. I cannot remember.

Q. Did you regulate or endeavor to regulate the rates of transportation of any transportation company other than a railroad company? A. No, sir.

Q. Did you use any system of bookkeeping for the railroads? A. No, sir.

Q. Did you attempt to do so? A. No, sir.

Q. Did you publish the rate-sheets or the rates established? A. Yes, sir.

Q. How often? A. Whenever we established one.

Q. While you were a member of that Commission have you made any effort to bring about a general regulation of the freights and fares of the Southern Pacific? A. Not as a whole system.

Q. Did you make an inquiry into the whole system of freights and fares? A. As far as California is concerned, I have.

Q. Did you do that officially or personally? A. More personally, and reported to the Board.

Q. Reported to the Board? A. Yes, sir.

Q. So that you knew generally what were the rates of fares and freights of the Southern Pacific? A. Yes, sir.

Q. Then, could you determine from your knowledge whether they

were just or equitable? A. My knowledge, so far as passenger rates are concerned, leads me to believe they are.

Q. And you could tell generally whether they were right? A. Yes, sir.

Q. Then, why did the Board employ an expert if you knew? A. The expert—my intention was to get more information about all the roads of the State—and to get the general information—in other words to have an engineer. The law of the State of Michigan—they employ an engineer, and he reports as Colonel Morgan has done for us, and that is the reason why I voted for Colonel Morgan, so we could get more information.

Q. Did I understand you correctly when you stated that you communicated this general knowledge to your colleagues? A. Yes, sir.

Q. And notwithstanding this general knowledge, and from which you concluded that freights and fares were equitable and just, yet the Board went and hired an expert? A. Yes, sir.

Q. You took the position that your duties were judicial, did you not? A. Mostly so.

Q. Did't you take it wholly so? A. Yes, I might say so.

Q. Do you believe that to be the construction of the Constitution? A. No, sir; but we were informed by the attorneys that we must give the railroad companies a day in Court, and I believe the Texas cases confirmed my judgment in that.

Q. If you believed that your duties were executive or legislative, why did you take the position in the Thirteenth Annual Report that your duties were wholly judicial? A. Did I sign it as such?

Q. Yes, on the bottom of page 7. Section 22, of Article XII, of the Constitution declares: "Said Commissioners shall have the power, and it shall be their duty to establish rates of charges for transportation of passengers and freights by railroad and other transportation companies, and publish the same from time to time, with such changes as they may make." This sentence from the organic law would seem to be susceptible of but one construction as to the powers and duties of the Commission. A consideration of the whole of Section 22, of Article XII of the Constitution, will show to an unbiased mind that the Board of Railroad Commissioners is essentially a judicial body; that while it is the creature and the servant of the people of California, it is so in the same sense, and to the same extent, that Courts of this State are the servants of its people. Every sentence and every intendment of the Constitution favors this view of the position and powers of the Commission, and forbids any other attitude on the part of its members than that of impartial arbiters between the transportation companies on one side, and the producers and shippers of produce on the other. The very section of the Constitution which declares that it is within the powers and duties of the Commission to establish rates of freights and fares, provides that such rates, when established, shall have the same effect as a judgment in a Court of law. If the conclusions of the Commissioners are to have such an effect, it is evident that in their deliberations which result in such conclusions, they should occupy the position of judicial impartiality. This is the only position in which they would be sustained by the Courts of the nation and the State.

Q. You took that position? A. Yes, sir.

Q. Now, that means that your duties were wholly judicial? A. Yes, sir; so far as trying cases were concerned.

Q. Does not that interpret that your duties are judicial? A. Yes, sir.

Q. Now, you claim that, in addition to judicial duties, you had other duties? A. Yes, sir; examine the road, and lots of other things.

Q. What was the reason that you took the position that the duties were wholly judicial? Were you so advised? A. Yes, sir.

Q. By the attorney of the Board? A. No, sir; we have no attorney.

Q. You have the Attorney-General? A. Yes, sir.

Q. And the District Attorney in each county? A. I never asked them anything.

Q. What attorneys have you been advising with? A. Yes, I talked with attorneys, and they made me think if we go ahead on our own motion and make a rate on a small road, say, for instance without giving that road a hearing, that the Courts would probably upset our decision. That was our impression, and I believe so now.

Q. And under that statement you have proceeded in the discharge of your duties? A. Yes, sir.

Q. Believing that you were a judicial officer and acting as such? A. Yes, sir.

Q. Have you observed at any time in looking this matter up, that any of the rates of fares and freights were exorbitant in the State of California? A. Yes, sir; so far as freights are concerned.

Q. Are there any of those instances where you have not endeavored to regulate them? A. I don't know of a case where we examined into them—we came to the conclusion that they had no grievances, or else we gave them a remedy.

Q. You cannot recall any cases where you believe the rates were exorbitant? A. No, sir.

Q. What effort was made toward the general revision of rates before the filing of the Shively case? A. None, that I have heard.

Q. Were you instrumental in any way in delaying the Shively complaint? A. No, sir. Never heard of it until it came into the Board.

Q. And that is your claim at a general revision, while you have been a Railroad Commissioner? A. No, sir.

Q. Why didn't you start some attempt to make a general revision of freight and fares? A. Well, if you will allow me to explain: In the first place it was the duty of the Commission to regulate freights and fares. The first Commission did so, and from time to time they reduced and regulated it. So when we got in there I made up my mind that so far as passenger rates were concerned they were just and right, and they didn't need any revision; and on the other hand I made up my mind that such as wheat, wood, stock, and a great many commodities, rock, granite—that they were nearly just and right comparing them with other States. And then there are other commodities I particularly reduced that were too high. And as fast as my attention was drawn to them, why, we endeavored to either get the railroad company to make a concession and reduce them, or have the parties file a complaint.

Q. Upon what did you base your conclusion that the passenger rates were fair and equitable rates in this State? A. On comparing them with twenty-seven States in the Union.

Q. Did you ever attempt to make any judicial investigation to determine that fact? A. I only have so far as I met with the Interstate Commission at Washington, and I traveled on to Chicago—from

Chicago to Washington—and we spent a little time together discussing on freights and fares.

Q. So you went upon your personal knowledge? A. Yes, sir.

Q. And upon your personal knowledge in that manner you took up the freights and fares of the Southern Pacific System? A. Yes, sir.

Q. And you started to officially inquire, to determine? A. No, sir; I took it individually.

Q. But from your own observation? A. Yes, sir.

Q. And taking your own opinion, to base your action upon it as a Railroad Commissioner that they were fair? A. Yes, sir.

Q. And since you were elected Railroad Commissioner, have the fares been reduced any? A. The passenger rates from Oroville have been reduced. They were reduced from Oroville to San Francisco \$1 75, and \$1 from Marysville to San Francisco. And the reason this was done, was that the Oroville people had to come around by the way of Sacramento, and lose twenty-three hours. Now, in the course of time, the Oroville line was finished, and then, we reduced the fare.

Q. Is there any other instance where you reduced fares? A. No; I cannot recall one to mind.

Q. Did you make this reduction by an order of official inquiry, or suggestion? A. Suggestion.

MR. OSTROM: I ask this question for information because, I had the information that the railroad people were the ones that made the reduction—was it the railroad company, or the Railroad Commissioners? A. In the first place, there was merely a written letter and an interview with Mr. Litchfield, and then we went to the railroad company and asked them if they would make that reduction, and we would not take it up; otherwise, we would have it brought before the Board in an official way. I can give you a little information by a letter, that I have in my pocket. This letter came from Mr. Rea's district. I have been over every railroad in California, twice or three times, except three little roads. And I come in contact with a great many people when I am around, and I don't tell everybody that I am a Railroad Commissioner. I ask if there are any grievances, and in that way I find out. In the Eel River and Arcata Railroad, I have not been to, and the Pacific Coast Railroad I have not examined. Now, I will read this letter, and that will give you a better idea of how we regulate freights and fares, than I can explain. This letter is from Shaw Brothers, down in Fresno. (Witness reads as follows):

“RAYMOND, CAL., January 26, 1893.

“Hon. WILLIAM BECKMAN, *Railroad Commissioner*:

“DEAR SIR: If you remember, some time ago we had a conversation (on train going from Fresno to San Francisco), regarding the rate of freight on the Raymond Branch. Recently the company has reduced the rate on wood to Madera only, to one dollar per cord, which is very reasonable, but as there is but very little wood shipped to Madera, compared to Fresno and Merced, the reduction does not benefit this community very much. What we need very much is a cheaper rate to Fresno and Merced, especially to Fresno, so as to compete with other localities on other branch roads. Brickyard men of Fresno tell us that they ship almost double the distance on the Bangor and Porterville branch, for less than they can from Raymond.

“Our firm alone could ship on an average of two thousand cars yearly, if we had a competing rate with other branch roads to Fresno. We have to pay the same rate from Herbert switch, three miles from here, as from Raymond. In shipping grain to Raymond, we pay same rate from Talbot switch, six miles this side of Berenda, as from Berenda. With the present rate on grain from Talbot or Berenda, we can haul it by team cheaper. They charge same for car-lots as for local from Berenda. At the present rate on wood to Fresno and Merced, it can be hauled by team from same locality for less than we can ship.

“If you think necessary, we will make complaint direct to the R. R. Commissioners, signed by the patrons of the road.

“Hoping that you will favor us with your influence in securing a cheaper rate on this branch to and from all points, we remain,

“Yours most respectfully,

“SHAW BROTHERS.”

This gentleman was on the train. I asked him where he lived, and he said he lived at Raymond, and I asked him how the railroad company was using him.

“Well,” he says, “they are charging us so that we cannot ship wood from there at all,” and finally I said, “Have you ever endeavored to get any lower rates from the railroad company,” and he said, “No.” So I advised him to write to Mr. Smurr or Mr. Stubbs—write to Mr. Smurr and state the facts to him, and I think he will give you a reduction, and if he does not, we will give you a hearing. Now, that is the way we do a great deal of the business, by saying to these people—the railroad people—“You are charging too much,” when we find it out.

MR. EARL: You have not acted in that case at all? A. No, sir; this came to-day. I have probably twenty or thirty letters of this kind, and in every case we hear the people.

MR. OSTROM: You informed him that you were one of the Commissioners? A. Yes, sir; before I got through with him. And if I have asked one man I have asked one thousand how they were being treated, and have heard very little complaint.

Q. It would seem to me that in place of recommending that he communicate directly to the railroad people, that you would take that in your own hands? A. We have done so at times. Now, if we live long enough to meet again, I will hand this to the Board, and the Board will communicate with Mr. Smurr, and Mr. Smurr will probably say, “Yes, we will concede it,” or he might say, “We will not,” and then we will file a complaint and go there and decide the case.

Q. Now, here is an instance: You know where my place is. Freight from Reed's to Port Costa is 12 cents, and around overland I believe it is seventy-two miles. Now, to Sacramento they charge, on the road from Reed's to Sacramento, nine and one half cents for forty-four miles. Well, it is over three quarters of the entire charge. Did you ever investigate matters of that kind? A. I think I have, right here. I have not from Reed's, but I have from Wheatland here, if you will look at page one hundred and one. That compares with the State of Illinois. You will there find the miles in Illinois, and in Illinois they have a uniform rate. Now, you go down to Wheatland, and we have that there—that is, forty miles to Port Costa.

Q. From Wheatland to Port Costa is forty miles? A. No; from Sac-

ramento. You will read it there in the book and go along down. Now, then, to Sacramento to Wheatland is forty miles. Now, you can compare it to the State of Illinois.

MR. OSTROM: I want to call your attention, if you have ever investigated these distances in regard to short hauls—I ask if you ever investigated that? A. You will find that I have taken the short hauls here, to Vallejo and to Stockton, and those shipping points which I have picked out—you will find them in the schedule there.

MR. MCGOWAN: Since you have been Railroad Commissioner have you made any order that the railroad company have refused to obey? A. No, sir; they refuse to obey it for the time being, but they finally obey it, and write us a letter stating that they do.

Q. Don't you recall any instance where they have up to the present time refused to obey the order of the Board? A. I cannot recall any.

Q. Do you recall any instance where they refused to obey even for a time? A. No, sir; but we give them often fifteen or twenty days within which to obey the order.

Q. Then the testimony to the effect that there were cases in which they did not obey is not true? A. Before I got in the Commission it might be true.

Q. You don't recall any instances of that kind? A. There may be, but it has slipped my memory.

Q. As I understand it, Mr. Beckman, you never made any attempt to regulate any of the smaller roads? A. No, sir.

Q. Nor any other transportation company? A. No, sir.

Q. Nor endeavored to establish a system of bookkeeping? A. No, sir. We did try to have a rate made on the Sacramento River, and it has not yet been completed. The difficulty is there they charge less from Sacramento to San Francisco than on some of the way-landings, and I brought that to the Board and the shippers that are interested; and if we cannot make satisfactory arrangements with the railroad company to cut down the rate, we will cut down the rate on the way stations. We will give them a hearing, and make a decision.

MR. EARL: Did you, Mr. Beckman, ever attempt to ascertain the cost of the respective roads—the twenty-seven or twenty-eight roads in this State, beginning on the north—take the Eel River road; did you ever inquire into the cost of that road? A. No, sir.

Q. Did you ever investigate the rates of freights and passengers? A. Yes, sir; I have, the rates.

Q. You never attempted to get at the income of that road? A. Only as they reported it.

Q. You never attempted, after ascertaining the cost of construction and the cost of rolling stock, etc.—the plant as it were—you never attempted to get at the reasonableness of the rates now charged by that road—

A. No, sir.

Q. Take the Yreka road? A. That I have examined thoroughly, and been over the road.

Q. Did you ever ascertain the amount of its cost? A. Yes, sir.

Q. You have? A. Yes, sir.

Q. When? A. About eighteen months ago.

Q. About eighteen months ago? A. Yes, sir; there was a complaint filed and I went up there and looked at it, and I was satisfied that the complaint was trifling.

Q. Was it a verified complaint? A. No, sir.

Q. Merely a letter? A. Yes, sir.

Q. Did you ascertain how much the road cost? A. I did at that time find out, and I have a memorandum of it somewhere. I also got the receipts of the road, the earnings and expenses, and the same with the Colusa road.

Q. Did you calculate on the Yreka road, as to the charges there, and see whether they were fair and just—the income on the amount of capital invested? A. My recollection is that the fare was eight cents, and my further recollection is that they are not making a cent, in fact, they are levying assessments to pay the running expenses.

Q. Did you ever prescribe any system of accounts for that road? A. No, sir.

Q. For the Eel River road? A. No, sir; mind you, they have a system that has been prescribed by a former Commissioner.

Q. That is a system prescribed by Mr. Rea, lumping them up together—it is a bookkeeping not segregated, as to what each particular line cost? A. Yes, sir.

Q. Did it ever occur to you that the proper course was not by such a system of bookkeeping, as that the Railroad Commissioners have permitted to be in force in order to get at the fair rate for freight and passengers? A. Instead of answering that directly, I think I had better give you my idea about it. If that was applied to one system in California it would work very well, but the Interstate Commerce Commission has applied to the Central Pacific and the Oregon road—they have prescribed a way for keeping their books, and the State of California cannot interfere with that system.

Q. Have you no power in the Constitution by which you can prescribe to them a system upon which they shall keep the books? A. Yes, sir.

Q. You never have exercised that? A. No, sir; we have not.

Q. You say that the Interstate Commerce Commission have prescribed a system by which the books shall be kept, in order to show the rate on Interstate business. A. But they have not undertaken to show the cost of operating the roads, etc., in the State of California?

Q. Not at all? A. No, sir.

Q. They didn't claim that you would conflict with any of their laws, by establishing a system upon which the interior freight would be carried on? A. I am not sure about that—that would not be common business.

Q. It would not be the law either? A. No, sir.

Q. Did you ever take legal advice on those matters? A. No, sir; I have had this experience with the railroad company. Whenever we got their books, we got what we wanted.

Q. Well, take the other roads in this State. I understand you, without taking them up each one—I understand you to say that you have not asked nor have you attempted to prescribe rates of freights and fares in the State of California? A. Yes, sir.

Q. Now, the same is true that you have not attempted to or prescribed a system of bookkeeping on any of these roads in the State? A. The present Board, yes sir.

Q. Now, in the Shively case, it has been said that the bookkeeping, as practiced by the Southern Pacific Company, did not segregate the income and cost of operating the separate roads along that system? A.

They have them all together, but when we ask them they segregate for us.

Q. Have they always done that? A. Yes, sir.

Q. Well, Commissioner Rea seemed to think that their system was faulty, and so that you could not ascertain at all—you heard his testimony in that regard? A. I think he is partly mistaken. I never went to the office but what we would get the books.

Q. Has the Board of Railroad Commissioners, of which you are a member, since the Shively case has been on, made any order prescribing a different course of keeping books? A. No, sir.

Q. Have you ever endeavored to ascertain from the Southern Pacific Company the cost of the roads operated by them? A. No, sir.

Q. Then you have not attempted to arrive at the reasonableness of the rate of the present fares and freights by this means—taking into consideration the cost of the construction of the road, and the cost and bonded debt, and the cost of operating expenses, and a dividend which would be just and reasonable, to be awarded on the capital stock of the road—you have never taken these elements into consideration, and upon them calculated what would be a just and reasonable rate to receive for them? A. Partially, we have done so, but not so far as the real construction of the road is concerned.

Q. Was it your purpose to do so in the Shively case? A. It was not mine. Mr. Rea has that theory, and if he can do so, all right.

Q. You are not acting in harmony with Mr. Rea? A. Oh, yes, sir. Now, I will probably have to go back to explain myself. I was here when this Southern Pacific was built over the snowhills, and from that I concluded because that road at that time, say, cost \$100,000 or \$200,000 a mile (whatever the cost may be), that we should not take that to make our consideration to-day, and that is one reason why I should not be so tenacious for the cost. Now, I remember when the Finance Committee lost all their books. Now, then, I don't see how we can get at it.

Q. You say that the Southern Pacific, in building over these hills, it cost a large amount of money. You don't affect to know how much money it cost? A. No, sir.

Q. You simply know that it was a large amount of money? A. Yes; it probably cost three times as much as it should. That is my opinion. I don't know this; but I don't see what benefit it would be to our Board whether it cost \$200,000 or \$500,000. We couldn't make any basis upon that.

Q. What would be right to take into consideration to make a rate upon? A. To make a rate upon the natural profit of the road, taking out the expenses.

Q. Irrespective of invested capital? A. No; put that in and allow them a reasonable amount for the bonds and the interest on the money.

Q. Interest on the money invested? A. Yes, sir.

Q. Even if it were \$200,000 a mile? A. No, sir.

Q. How would you price it? A. In that case there is a certain amount of bonds that the road is holding, and the taxes upon the road should be paid, and a reasonable amount allowed for rolling stock.

Q. Would you allow nothing for the sinking fund to pay off these bonds? A. Yes, sir.

Q. Would you allow no dividend to pay the stockholders? A. Well, they ought to have it.

Q. Would you allow it? A. Well, that road—you never could allow it.

Q. It has declared dividends? A. That is not the evidence before our Board.

Q. You know it has declared a dividend, though? A. That is years ago. Not during my term of office.

Q. You never ascertained the amount of freight—the tonnage—and the number of passengers carried; in other words, you never sought to ascertain the density of traffic on the road, and to fix rates in accordance therewith? A. I got that information from the reports, and I compared those reports with the reports of other States.

Q. You never examined, say any of the stage lines in this State—the transportation companies? A. No, sir; my understanding was that we had no jurisdiction over stage lines.

MR. MCGOWAN: They are transportation companies. A. Well, so are street car roads, for that matter.

MR. SEAWELL: There has been no adjudication of that—for instance, stage lines—there has never been any case in which they decided that they had any rights— A. (Interrupting.) While I have been in the Board we never tried to regulate any stage lines.

MR. OSTROM: Mr. Beckman, you stated a moment ago about the cost and the estimated allowance of profit. Did you ever take into consideration, as an offset to these heavy costs, the large amount of public domain that these corporations have received from the Government—have you ever taken that into consideration as an offset? A. No, sir; I never did.

Q. You know that they did get this land? A. Yes, sir.

MR. SEYMOUR: I understand Mr. Beckman's position was this about the regulation: that they ought to give a rate of transportation for passengers and freight—an amount sufficient to pay the interest on the bonds, and also to pay interest on the amount of money used in the construction that a road can be completed at this time. Is that it? A. That would be about my theory. That would not be exactly, because where you have a road constructed—for instance take the San Joaquin Valley road—that is a cheap road and built at a time that it cost more to build than it would now. Now, you could get your ties through Fresno, and you could construct the railroad a great deal cheaper than at that time. And I would say what was a reasonable figure at the time it was built would be the basis upon which to figure. Some places have been very costly—for instance, that cañon at Los Angeles. I was the other day on a snow plow where there were four engines attached and pushing. Now, that should be considered in comparing expenses also.

MR. MCGOWAN: What is the average rate per mile, for passengers? A. For passengers?

Q. The average income per mile? A. I can not tell.

Q. Have you ever made any official inquiry? A. No, sir; only the report of the railroad company. They send in a sworn statement.

Q. And whatever you know officially, comes from accepting their statements? A. Yes, sir.

Q. You have never started any official inquiry to determine that? A. No, sir.

Q. In fixing fares and freights you take that into consideration, don't you, what their income would be? A. Yes, sir.

Q. Did you do it in fixing any of your rates on freights and fares?
A. Yes, sir; on the Porterville road. We probably imposed on the railroad company. Their showing to us established, and it was proved, that they were losing money on the road every day.

Q. Was it as much as \$70,000 a year? A. The books will show it.

Q. Well, in regulating in any other instance, did you take into consideration their income? A. That was our object.

Q. And that income you got from their sworn statement? A. Yes, sir.

Q. And not from any official investigation you made on the subject?

A. Yes, sir; the same as we do on the other roads.

Q. Where do you get your tariff sheets from? A. Every company files them with our Board.

Q. You get the general sheets? A. Yes, sir.

Q. Do you get any sheets or contracts to establish special rates? A.

No, sir.

Q. None at all? A. No, sir.

Q. You knew nothing about the special rate? A. No, sir.

Q. Do you publish the new rates that they file? A. No, sir; we keep those in our office.

Q. Do you know of instances in the State where they are giving special rates to shippers? A. No, sir.

Q. Never heard it charged? A. Yes, sir; I have heard it charged. There is one case came out in testimony—the Santa Cruz Lumber Company—where the narrow gauge at that time gave a rebate; that is, a certain number of lumber dealers that had a special rate, a dollar and a half rebate, or more, and the others had to pay the dollar and a half.

Q. That was brought out in testimony that they were given these lumber companies? A. That was not the Southern Pacific Company.

Q. Did it ever come to the official knowledge of the Board that they were giving special rates? A. No, sir.

Q. Do you know of any instance? A. I have not heard a single one. I have not heard of one since I have been there.

Q. You never made any investigation to find out whether they were? A. No, sir.

Q. You are convinced that they are, though? A. No, sir.

Q. Don't you know as a matter of fact that they do? A. No, sir.

Q. Isn't it generally conceded that they do? A. I never heard of it.

Q. You never heard of the Southern Pacific Company giving special rates? A. They will give special trip tickets.

Q. Special freight rates? A. Not to my knowledge; there may be. I have been to some of the mills, and if they have it, they have covered it up pretty well, if they have a special rate. I had a talk with a man the other day, and asked him if he was not getting a rebate. "No, sir," he says.

Q. Don't you know that Wells, Fargo & Co. has given Bancroft a special rate on books in this State? Do you know if the Southern Pacific send out any special rates to shippers in this State? A. No, sir.

Q. None of them were ever brought to the attention of the Board—nothing of that kind? A. Not to my knowledge.

MR. SEAWELL: You never had any business transactions with the railroad company in banking or anything of that kind? A. No, sir; the nearest we come to that is that Crocker, Woolworth & Co. is our banker and agent.

MR. MCGOWAN: Now, it is said that the rates on lumber from Sisson to Red Bluff are the same as from Sisson to Davisville. Now, of course there is a great deal of difference between Red Bluff and Davisville. Now, why should the same rate obtain between those places, one being a shorter distance than the other? A. The only way I can answer that is this: There are certain commodities that, when you move it a long distance, you can only charge a certain amount for it. For instance, hay and rock. Now, when you charge a higher rate than perhaps is charged in places, it wouldn't pay to remove it.

Q. It is the same rate from Sisson to Red Bluff as it is from Sisson to Davisville? A. There should be some difference there. Do you know whether that is a correct statement?

Q. Do you know how far the freight boats run up the river? A. I don't think any of them run beyond Sacramento City.

Q. Don't they come within four miles of the city? A. I presume they do.

Q. Do you know whether or not an official held out a threat that they would ruin them or put up rates or do something to intimidate them? A. No, sir; I never heard of it.

MR. MAHONEY: Did Mr. Leeds ever prepare a wheat schedule? A. Yes, sir.

MR. MCGOWAN: Did Mr. Rea ever state to you at a meeting that you got your rates from Fourth and Townsend street? A. No, sir; not in that way. We were there one day and Mr. Litchfield being a little hard of hearing—made some proposition about—it was not about rates I don't think, something else, and Rea, in his off-hand way, said "Where did you get that from, Fourth and Townsend Streets?" and I turned around and said, "I won't allow you to talk that way to my colleague." Here is a comparison now, if you will open your book on page 52.

MR. MCGOWAN: While you are getting down to that I want to ask one question: Do know whether the Southern Pacific gave special rates to the Standard Oil Company? A. I never heard of it.

Q. Did you read it in the papers? A. No, sir.

Q. Did you know that the Southern Pacific gave a special rate to Whittier, Fuller & Co.? A. No, sir.

Q. Didn't you see it published in the paper? A. No, sir; that is the first I heard of it.

MR. MAHONEY: If they had given a special rate, would you have investigated the matter? A. Yes, sir; it is our duty.

Q. In this State? A. Yes, sir; if it was in this State. Now, I want to show you on this map (pointing); now, all these. Now, here is Raymond, and here is Ione, and here is that Stockton road, and here is Milton. Now, here are all the branches on the other side of Port Costa. Now, I want to draw your attention. Now, the first one here reads, Mr. Leeds says, from Napa Junction to Port Costa, twelve miles distance, the real distance thirty miles. From Flosden to Port Costa, at nine miles, while the wheat has to be hauled by way of Vallejo, which is thirty-three miles. This is Mr. Leeds' figuring. Now, from Crescent to Port Costa, sixteen miles; the real distance, twenty-six miles; from Napa to Port Costa, twenty miles, real distance, thirty-eight miles; Oak Knoll to Port Costa, twenty-five miles, real distance, forty-three; Glen Ellen to port Costa, thirty-four miles, real distance, sixty; Rutherford to Port Costa, thirty-four miles, real distance, fifty-three; Belle to

Port Costa, forty miles, real distance, fifty-seven; St. Helena to Port Costa, thirty-eight miles, real distance, sixty-four; Los Guillicos to Port Costa, forty-three miles, real distance, sixty-one; Annadel to Port Costa, forty-four miles distant, real distance sixty-two; from Bale to Port Costa, forty-two miles, real distance sixty-three. These are the distances as put forth by Mr. Leeds. Mr. Leeds compared two hundred and fifty-two stations in California, with thirty-six stations in Kansas. In Kansas Mr. Leeds took the road from Atchison to Larned, two hundred and ninety-one miles, and on a straight line from station to station. In California he took one hundred and forty-four stations on short branch roads such as Oroville, Carbondale, Ione, Fruto, Rumsey, Calistoga, Alcalde, Raymond, Santa Rosa and on other branch lines. Take it from Port Costa towards Bakersfield, and it also runs higher—

MR. MAHONEY (interrupting): This is not a just comparison? A. No, sir.

Q. The purpose that Mr. Leeds got this up for was to deceive the public—that is the reason? A. That is the reason.

Q. (To Mr. Litchfield.) That is the reason you also gave, is it Mr. Litchfield? A. Yes, sir; that is what I said last night.

MR. LITCHFIELD: I would like to say to the Committee that there was a question asked me about making rates for small roads. I will say that we have made rates for all of these small roads by approving their rates. A short time ago I got an engineer to inspect the roads and see what they had been doing. We had been giving a great deal of time to the matter of duties of Railroad Commissioners, but it is impossible for a Railroad Commissioner to straighten out this matter in a week, or a month, or a year. I have differed with Mr. Rea. Mr. Rea's hobby has been to delve in and find out the cost of a road, and I said it is useless. The Interstate Commerce Commission was out here and spent some time and found out nothing afterwards.

MR. BECKMAN: I would like to say, gentlemen, that I have endeavored to handle the Railroad Commission as I would my own banking business. I wish to say that in conclusion.

TESTIMONY

TAKEN BEFORE THE

SENATE COMMITTEE ON CORPORATIONS,

IN THE MATTER OF

RAILWAY ASSESSMENTS, AND THE PAYMENT OF TAXES
THEREUNDER, FOR THE YEARS 1880 TO 1892, INCLUSIVE.

TESTIMONY.

The Senate Committee on Corporations met in room 26 of the Capitol building on Thursday, January 26, 1893, at 2 P. M., and the following testimony was taken:

W. W. DOUGLAS.

Sworn.

MR. CROSS: Mr. Douglas, where do you reside? A. At present in Sacramento.

Q. What is your age? A. My age is twenty-nine.

Q. What is your official position, if any, in relation to the State of California? A. Deputy Controller.

Q. Did you come here upon a request made to the Controller to either himself come or to send such deputy as should be thoroughly familiar with certain matters of record in the Controller's office? A. Yes, sir.

Q. You were requested to produce certain books showing the payments of taxes which should have been assessed by the State Board of Equalization. Have you such books with you? A. Yes, sir.

Q. Will you please produce them? A. Here are the books.

Q. Are the five books now before you official records of the State of California kept in the office—in the Controller's office of this State? A. Yes, sir.

Q. They are correct records of such matters as they record, and pertaining to that office, are they? A. Yes, sir.

Q. What records, if any, have you pertaining to taxes paid by railroad companies in the year 1888? A. Well, we have on file in the office both the duplicate assessment of railways and the duplicate apportionment of assessment of railways. I have before me simply the duplicate apportionment of assessment of railways.

Q. Have you in your office also the duplicate assessment? A. Yes, sir.

Q. Would you be kind enough to obtain those books also? A. I will have to go into the office for them. I did not know the committee would want those.

[The witness procures the books.]

Q. Mr. Douglas, have you present the official duplicate record of assessment of the Central Pacific Railroad Company for 1888? A. The Central Pacific?

Q. Yes. A. Yes, sir.

Q. Will you please produce it? A. I have it here.

MR. CROSS: Gentlemen, I offer this in evidence. I do not suppose you care to hear it all read.

SENATOR SEAWELL: State the substance of it.

MR. CROSS: The substance of it being that the State Board of Equalization has assessed the property of the Central Pacific Railroad Company at a given amount, giving the territory, by counties, through which the road runs, and stating the total aggregate of the assessment of such

properties for the year 1888, together with the rate of tax. I believe, Mr. Douglas, fixed upon the same.

THE WITNESS: Yes; well, the rate of tax is not contained in this document.

MR. CROSS: As there will be a number of these documents to introduce, if the committee desires to hear it, there might be one of them read, as I think it will convey to the committee some information.

THE CHAIRMAN: I think it is altogether unnecessary.

MR. CROSS: Will you please state through what counties that road runs, as appears by that official document? A. City and County of San Francisco, Alameda County, Santa Clara County, San Joaquin County, Sacramento County, Sierra County, Nevada County, Placer County, Yuba County, Sutter County, Butte County, Tehama County, Shasta County, Siskiyou County. That is a portion of the road. And then, again, another portion, San Joaquin County, Stanislaus County, Merced County, Fresno County, Tulare County.

Q. What was the total aggregate of assessment of the Central Pacific Railroad, just referred to by you in your testimony, for the year 1888, as appears by that document? A. \$15,000,000.

Q. Will you now refer to the duplicate apportionment of railways book, as kept in your office? A. Yes, sir; I have it here.

Q. What, generally speaking, does such record show? A. Well, it shows the apportionment of the value of this railway between the different counties through which it runs.

Q. So as to show what share of the assessment should be allotted to each county through which the road runs? A. Yes.

Q. Will you please turn to the document of 1888. A. I have it.

MR. CROSS: We will offer that in evidence, but will not take time to read it.

MR. CHAIRMAN: It apportions it through the counties that you have already named, I suppose? A. Yes.

MR. CROSS: Have you any official record of the Controller's office as to what the total amount of taxes against that railroad was, for the year 1888? A. Yes, sir.

Q. What was the total amount of taxes as claimed under that assessment to be due the State, and all of these counties through which it runs? A. \$218,312 76.

Q. Have you any reference showing what amount of taxes was paid by that company for the assessment of that year? A. That amount was paid.

Q. You have a record showing that fact, have you? A. Yes.

Q. What is the name of the record which shows that fact? A. Well, the fact is noted on this duplicate record of apportionment of railway assessments.

Q. Is that the proper official place in which to keep the record of that fact? A. Well, that is one record—that is a proper record of it, yes. Then we have other records of it.

Q. Does it show at what date that tax was paid? A. Yes.

Q. Then, for the year 1888, the entire tax assessed against the Central Pacific Railroad Company by the State Board of Equalization was fully paid, was it? A. Yes, sir.

Q. At what date was it so paid? A. Twenty-eighth of December, 1888.

Q. Before the same became delinquent? A. Yes, sir.

Q. To whom do the records show it to have been so paid? A. It was paid to the Treasurer of the State.

Q. The State Treasurer? A. Yes.

Q. When he receives the money, he makes a proper certificate of that fact and returns it to the Controller's office, does he? A. Yes, sir.

Q. And then you enter it upon the official record in your office? A. Yes, sir.

Q. Have you the official record of the duplicate of the assessment of the Southern Pacific Railroad Company for the same year? A. Yes.

Q. Please produce it? A. I have it here.

Q. Through what counties does that road run, as appears by the official record? A. City and County of San Francisco, San Mateo County, Santa Clara County, Santa Cruz County, San Benito County, Monterey County, San Luis Obispo County, Fresno County, Tulare County, Kern County, Los Angeles County, San Bernardino County, San Diego County; and another division through Kern County and San Bernardino County.

Q. Were Ventura and Santa Barbara included in that? A. No, sir; there is the railway known as the Southern Pacific Branch Railway Company, which runs through Ventura, Santa Barbara, and San Luis Obispo Counties, in that year.

Q. Is it included in that? A. No, sir; that is a separate assessment.

Q. All right; then I want to inquire into this. What amount did this official document purport to assess to the Southern Pacific Company? A. \$14,000,000.

Q. Have you an official document showing the amount of tax which was apportioned or levied upon that assessment? A. Yes, sir.

Q. Please produce the document. It is offered in evidence? A. I have it here.

Q. What was the amount? A. \$186,756 60.

Q. What proportion of that, if any, do the official records show was paid? A. The entire tax was paid.

Q. The entire amount? A. Yes.

Q. At what date? A. The 28th of December, 1888.

Q. And before the same became delinquent? A. Before the same became delinquent, yes.

Q. Have you the official duplicate assessment of the Southern Pacific Branch Railroad? A. Yes.

Q. For the same year? A. Yes.

Q. Will you please produce it? A. I have it here.

Q. Through what counties did that road run? A. Through Los Angeles County, San Luis Obispo County, Ventura County, Santa Barbara County.

Q. At how much was that road returned as assessed by the State Board of Equalization for that year? A. \$625,000.

Q. What amount of tax was claimed to be due on account of such assessment?

SENATOR SEAWELL: Mr. Cross, is it not admitted that the taxes of 1888, 1889, 1890, 1891, and 1892 are all paid?

MR. CROSS: No, sir. Mr. Shanahan disputed it in the plainest terms, as I understood him.

THE CHAIRMAN: Well, it has been disputed a great many times, and by a great many newspapers, and by a great many people. You may go on with the evidence.

MR. CROSS: I am under the impression, if the Senator will allow me, in answer to Senator Seawell's question—that there are a great many people who honestly believe that those taxes have not been paid—and I think this investigation should help to set the matter right. Of course I do not desire to take any testimony of this character, unless the committee desire to hear it?

THE CHAIRMAN: Go on.

THE WITNESS: I have the apportionment of the Southern Pacific Branch Railway Company here, and the amount of taxes is \$8,334 68.

Q. How much of that does your record show to have been paid? A. The entire amount.

Q. And at what date? A. December 28, 1888.

Q. Have you similar records with regard to the California Pacific Railroad Company for the same year? A. Yes, sir.

Q. Will you please produce them and state the items which I will call for. First, through what counties the road runs? A. Solano County, and Napa County, Yolo County, Sacramento County. Those are the four counties, I believe.

Q. At what amount were those roads returned by the State Board of Equalization for that year, for assessment purposes? A. \$2,500,000.

Q. What amount of tax was claimed to be due, an account of that assessment? A. \$33,623 22.

Q. How much of that has been paid? A. The entire amount.

Q. At what date? A. December 28, 1888.

Q. The Northern Railway Company. Please give us items of the same character without detailed questions, if you please. A. It runs through Alameda County, Contra Costa County, Solano County, Yolo County, Colusa County, and Tehama County. The amount of assessment returned by the State Board of Equalization is \$2,225,000.

Q. And the amount of tax claimed on account of such assessment? A. The amount of tax is \$27,640 09, all of which was paid on the 28th of December, 1888.

Q. Do you know that portion of the road—these railways—which at one time was called the San Pablo and Tulare Railroad Company? A. Yes. I think the assessment is here.

Q. Within which one of these was it included in the year 1888, if you remember it? A. I think it is separate.

Q. You think it is separate? A. Yes. It is San Pablo and Tulare extension.

Q. Through what counties did it run? A. San Joaquin and Stanislaus Counties.

Q. And what did the official returns show? A. \$180,000.

Q. That is the assessment? A. Yes.

Q. What amount of tax was claimed to be due? A. The amount of tax, \$10,294 23; paid on the 28th of December, 1888.

Q. Do you distinguish between the San Pablo and Tulare Railroad and the San Pablo and Tulare extension? A. Oh, I beg pardon. I have got the San Pablo and Tulare Railroad. Of this San Pablo and Tulare extension, the amount of tax is \$1,980.

Q. And that was all paid? A. That was paid on the 28th of December, 1888.

Q. Now, how was it as to the San Pablo and Tulare road? A. The San Pablo and Tulare Railroad runs through Contra Costa County,

Alameda County, and San Joaquin County; assessed at \$900,000; amount of tax is \$10,294 23; paid on the 28th of December, 1888.

Q. The Vaca Valley and Clear Lake?

SENATOR SEAWELL: Since this investigation has been entered upon, in order to save time, I think this committee will unanimously sign a statement that the taxes have been paid in full for 1888, 1889, 1890, 1891, and 1892.

THE WITNESS: Not in full; there is a portion due yet; the second installment is due for 1892.

THE CHAIRMAN: If Mr. Douglas will make a general statement as to the amount of taxes that have been levied upon the railroad company—all these companies—for the years 1888, 1889, 1890, 1891, and 1892, and will state that they have all been paid, except the last installment of the taxes of 1892, and the committee accept that as the truth, why, there is no need of investigating that matter further.

SENATOR SEAWELL: All your statements show that they have been paid except the last installment? A. Yes.

MR. CROSS: That last installment is not yet due? A. It is not due yet; no, sir.

MR. CROSS: Then, I think we can, so far as the parties I represent are concerned, dispense with the further testimony of Mr. Douglas. Mr. Douglas, will you be kind enough to make up that statement as promptly as you can? A. Yes, sir. You wish a statement showing that all these taxes have been paid?

MR. CROSS: I think the committee wants a tabulated statement.

SENATOR SEAWELL: Stating the amount of tax and the amount paid, and when it was paid. A. You simply want the total of the State and county taxes. You do not want it segregated at all?

SENATOR SEAWELL: For the several years—no; we do not want them segregated at all.

MR. CROSS: Make them up in tabulated form, if you please, showing the amounts for which the property is assessed, the amount of tax levied, and the amount of taxes paid, and when paid.

SENATOR MAHER: And the same may go in as part of the record in this investigation.

MR. CROSS: Mr. Douglas, are you able to select out the particular roads now forming the Southern Pacific system? A. Well, I do not know as I could do it right away—no.

MR. CROSS: Perhaps, Mr. Chairman, it would be well for him to tabulate all the roads in the State—

THE CHAIRMAN: He is expected to show what roads the Southern Pacific paid taxes for.

E. B. RYAN.

Sworn.

MR. CROSS: Mr. Ryan, where do you reside? A. In San Francisco.

Q. What is your business? A. Tax attorney or tax agent of the Southern Pacific Company.

Q. How long have you held that position, with that company and its predecessor in interest? A. Over twenty years.

Q. As such, are you thoroughly familiar with the accounts and records and facts with regard to the tax matters of that company? A. I am—

Q. Please state whether or not the Southern Pacific Company, and the roads which it now manages, or any of them, pay taxes other than such as are paid directly to the State Treasurer, and recorded in the State Controller's office? A. Yes, sir; they do. The Southern Pacific does.

Q. Please state to the committee what other classes of property, besides such as are returned to the State Controller's office and paid directly into the State Treasury, that company, and its predecessors in interest, pay taxes on? A. Station grounds, stations, personal property of all kinds, the round houses, machine shops, and everything outside of what you might call the plant of the railroad itself, and its rolling stock.

Q. Have you any statement showing what amount of taxes has been paid by this company, and its predecessors in interest, during recent years on account of such properties? A. I have.

Q. Will you please produce the statement, or figures? A. For what particular years?

Q. Beginning with the year 1892, if you please? A. 1882, or 1892?

Q. 1892. We will go back instead of forward. A. Please ask your question again.

Q. Please state upon what amount of property in the State, other than such as is assessed by the State Board of Equalization, or is required to be assessed by the State Board of Equalization, and other than such as the taxes upon are paid directly into the State Treasury, the Southern Pacific Company has paid taxes upon during the year 1892? A. If I had known it was the desire to get that information I could have got it to a cent; but I supposed the investigation would pertain entirely to the taxes on the State Board assessment. But I can approximate and say it is between \$125,000 and \$150,000 a year.

Q. For how many years past has that been the case? A. Ever since the adoption of the new Constitution, sir.

Q. Have those taxes, in the different counties in which they are assessed, been paid without delinquency? A. Yes, sir.

Q. Will you furnish to this committee a tabulated statement of such taxes, showing how much has been paid for each year? A. I will.

Q. In the aggregate, on those properties? A. I will—from my books.

Q. From any correct source? Mr. Ryan, what do you know concerning the payment, or attempt to pay, any taxes levied, or attempted to be levied, or attempted to be assessed for the year 1885, upon roads or properties now operated by the Southern Pacific Co.? A. All the taxes levied on the local assessments were paid. I made a proffer to Mr. Dunn, who was then Controller of State, of 60 per cent of the total assessment made—of the taxes on the assessment made by the State Board of Equalization.

Q. When did you make that tender? A. December 9th or 10th, 1885.

Q. Before any taxes had become delinquent for that year? A. Before they were delinquent.

Q. That tender was declined, was it? A. Mr. Dunn said that he could not, under the law, receive any such tender. He was very clever about it, and said that he could not, under the law, receive it as the Controller, or give me an order for the Treasurer to receive it.

Q. That is, he treated it officially as without his official authority? A. Without official authority so to do, sir.

Q. He expressed no objections to receiving it other than that, as he understood the law, he was not by law authorized to receive or act upon any such tender? A. Mr. Dunn exhibited no animus in the matter, merely a cold-blooded official.

Q. What do you know with regard to the taxes of 1886 in that regard? A. I cannot speak as positively about 1886, because I have no memorandum concerning that? Judge Denson has a memorandum, which he has been endeavoring to find. He says that the tender was made in his presence. That is hearsay, though.

Q. Were you in any way connected with that tender, or was that attended to by other parties, if any such tender was made? A. My recollection is that it was made in 1886 by myself, in the presence of Judge Denson.

Q. But you cannot remember particularly? A. I cannot, sir, unless I had a memorandum to refresh my memory, it being so far back.

MR. CROSS: I do not know but what I had a memorandum from Judge Denson, or somebody, about that matter.

THE WITNESS: I cannot state positively what time it was. My recollection is, it was for 1886 taxes.

Q. What, if anything, do you know in regard to any tender being made for the year 1887? A. About the same condition of things developed, and in the same form—not having a memorandum of it.

Q. Have you any memorandum showing what amount of taxes was paid by the Southern Pacific Company, or the roads now under its management or control, during the year 1884? A. Yes, sir.

Q. What was the total paid for that year? A. \$353,652 83.

Q. What amount was paid for the year 1883? A. \$356,149 86.

Q. What amount for the year 1882? A. \$376,134 79.

Q. And for the year 1881? A. \$356,985 63.

Q. And for the year 1880? A. \$395,301 47.

Q. That was the first year in which these complicating questions about methods of assessment by the State Board of Equalization arose? A. Yes; that was the first year in which the State Board of Equalization exercised any functions in the assessment.

Q. That was under the change in the organic law? A. Yes.

Q. Have you the aggregate amount of the tax now paid during all the years concerning which I have questioned you? A. Yes, sir.

Q. And what is the total aggregate for those years? A. In the State of California?

Q. Yes; the aggregate paid for taxes? A. \$5,629,786 40. And I will explain, that in making this amount I make an estimate that I mentioned before, as to what the local taxes would be. They are between \$120,000 and \$150,000 a year. I have placed it at \$120,000 here.

Q. Is that a close approximation as to those matters? A. It is a close approximation; because I think they will exceed the amount I have just called. The actual amount will exceed the amount I have just called.

MR. CROSS: Mr. Chairman, I will state that the roads under consideration in this investigation, represented by me, do not claim to have paid any taxes for the years 1885, 1886, and 1887, as assessed or claimed to have been assessed by the State Board of Equalization.

THE WITNESS: We did pay \$49,000.

Q. You did pay \$49,000? A. Yes, sir.

MR. CROSS: Very well. Except the sum of \$49,000.

Q. Mr. Ryan, during the years 1885, 1886, and 1887, state whether or not all of the taxes claimed to have been assessed by any authority other than the State Board of Equalization, against property of these companies under discussion, were fully paid. A. Promptly paid before delinquency.

MR. CROSS: Mr. Chairman, the witness is now in the hands of the committee.

SENATOR SEAWELL: Does your statement of \$5,000,000 include all the taxes since 1880? A. Yes, sir. Including the local as well as what we have paid on the assessment made by the State Board of Equalization.

Q. Do you know what is the total amount assessed against your properties by the Board of Equalization during that period. A. I think I can furnish it for you here, sir. I am not sure.

Q. Does the statement which you have made, in regard to the gross amount paid, include 1892? A. It includes the first installment paid in 1892.

Q. From 1880? A. Yes, sir; to the first installment of 1892, inclusive. I have, Senator, the amount for 1885, 1886, and 1887 here.

Q. What is the amount of taxes? A. \$1,999,986 77. It shaves two millions very closely, sir.

Q. And of that you paid \$49,000? A. No, sir; I haven't the \$49,000 in this at all, sir. I considered that out of the way in making this statement.

Q. For those years have the taxes been paid? A. I am reading just what has not been paid. Probably I misunderstood your question.

Q. I say the \$49,000 should be added to that. You paid that much? A. We paid that much. If added to that and then deducted again, it would leave it just as it is here, sir.

SENATOR MAHONEY: How did you come to pay in that \$49,000? A. There were so many large and small roads in my department, sir, that I wanted to get some of them out of the way; and more especially where they were assessed, as I argued to our law department, reasonably in value.

SENATOR SEAWELL: Well, for 1885, 1886, and 1887, did you offer to pay the tax, or any part of it? A. Only as I have stated, sir. I remember 1885, very well, but the other I am not so clear on, and I would much prefer that Judge Denson, whom all of you gentlemen know, would make his statement relative to those things.

Q. Why were the taxes not paid for those years; do you know, Mr. Ryan? A. They were considered onerous, out of all proportion to the assessed value of other property in this State, and, to a certain extent, a certain vicious element was contained in it, as was thought.

Q. Well, was the federal franchise assessed during those years? A. Undoubtedly, sir.

Q. Well, was it assessed *eo nomine*, by name—federal franchise? A. No, sir.

Q. You think it was in effect, but not directly? A. Senator, I feel sure it was assessed not only in effect, but as directly as it could be arrived at by putting a certain additional element of value in that which was taxable.

Q. For 1885, do you remember what the assessed value of the road was, per mile? A. I remember the entire assessment, sir.

Q. What was the assessment for that year? A. The entire assessment? That is, the entire road—what it was assessed for?

Q. Yes. A. Twenty-two millions.

Q. Twenty-two millions? A. Yes—oh; the Central Pacific road?

Q. The Central Pacific road; what was it assessed at for 1890? A. Thirteen millions.

Q. What was the Southern Pacific assessed in 1885? A. Seventeen millions.

Q. What was it assessed at in 1890? A. In 1890, fifteen millions, sir.

Q. Did you appear before the Board of Equalization during those two years in behalf of the railroad? A. Every year since 1880, Senator.

Q. Well, did they take evidence at the time they made the assessment, as to its value? Did they take your evidence? A. They took my evidence, but it did not seem to be of much weight.

Q. And you would not pay the taxes. Don't you think, as a matter of fact, you ought to pay something for those years, Mr. Ryan? A. Yes.

Q. You are willing to do that? A. Yes, sir.

Q. You offered to pay 60 per cent right along, did you not, of the valuation you pay on now? And are you willing to do that now? A. Are you asking my opinion?

Q. I mean, what is your opinion? A. I will give it to you, sir, freely. I think a regular assessment made for 1885, 1886, and 1887, on the basis of 1893, not all together, but each one separately and on the same basis of value per mile, with the regular levy of the rate of a State tax for that year, and each of the regular levies of each county through which we run, of its tax for that year, would be very acceptable and very willingly paid. I think it would be paid, sir.

Q. Don't you understand that under this reassessment bill, if it be found constitutional and a proper provision, the property would be reassessed, and, under sentiment as it exists to-day, a general depreciation of railroads; don't you think that this reassessment bill would adjust all differences between the people and the railroad? A. You mean what is known as Assembly Bill No. 10, sir?

Q. Yes. A. I cannot see it so, Senator. I must say I cannot see it so.

Q. What is your objection to the bill? A. That it invokes not only the old tax, but the old rate of levy. Invoking the tax of the old rate of levy, it necessarily follows that there must be exactly the same assessment. Such being the case, and a void element in the old assessment, I think it would all fall to the ground, in addition to my objections to the amount at which it would be assessed—not eliminating in this invocation the element that is not taxable, and is, as the State Board of Equalization has acknowledged, of a great deal of value.

Q. Well, the power to reassess, I think, is settled, provided our system of taxing railroad property is correct. Now, would the present Board of Equalization, which would reassess your property and reassess it from its value, as it existed at that time, from what they know of it to-day, why, you have no apprehension that they would put it at an exorbitant figure, have you? A. I have not the slightest idea that that bill would leave any such discretion in that Board, sir. If you will read it closely I think you will find that out.

Q. You were Assessor of this county, were you not, Mr. Ryan, before you were tax agent? A. Yes, for several years.

Q. And you have given this subject a great deal of inquiry and investigation? A. Yes, I have.

Q. And you have acquainted yourself with the laws and statutes that control in other States pretty extensively? A. I think I have, sir. My jurisdiction extends over two Territories—three Territories and another State.

Q. Well, from such investigation as you have given this subject, and from your personal knowledge in the line of your services as tax agent of this company, do you know whether this provision exists in other States? I ask you the question for information, because I am not fully apprised of it. Is not there a law similar to this in Massachusetts? Have you examined that? A. I only know from hearing the decisions read last night or the night before.

Q. Your research has not extended that far? A. No, sir.

THE CHAIRMAN: The law of Massachusetts is a general statute that embraces all cases that come within its purview.

SENATOR MAHONEY: The taxes for 1885—did you go before the Board of Equalization in reference to those? A. I did, sir.

Q. For the purpose of having the taxes reduced? A. I cannot remember whether I did, or not. I went several times before the Board of Equalization, asking a reduction after the regular assessment had been made by them. Whether that would apply to 1885, I cannot say.

Q. Or any of those years? A. I cannot remember the years, but several times I did so go.

Q. Now, were the taxes in 1884 higher than they were in 1885? A. Yes, sir.

Q. They were? A. Yes, sir.

Q. Is it the custom of the Board of Equalization to raise and lower taxes? A. It is not the custom of the Board or an Assessor to assess property higher the succeeding year than the year previous, unless there is some new element that has come to light. He is not apt to assess it lower, unless some new or some element should be non-taxable.

Q. (Question read by reporter.) A. Yes, sir; it is.

THE CHAIRMAN: Is it where they make the assessment themselves? A. That is, to raise and lower their assessment—not the taxes.

SENATOR MAHONEY: In 1885 the assessment of the railroad was higher than it was in 1884? A. No; in 1884 it was higher than it was in 1885.

Q. And that was the reason that you went before that Board to have the assessment reduced, was it not? A. Every year I went for that special purpose, when I went before them, sir.

Q. The Board refused to reduce that assessment? A. Yes, sir.

Q. And those were the grounds on which the railroad refused to pay their taxes? A. Yes, sir; that was one of the grounds.

SENATOR SEAWELL: As I understood it, you paid that \$49,000 on small lines? A. Short lines.

Q. You paid in full on those lines? A. Paid in full on those lines.

Q. Because the assessment, you deemed, was just and proper? A. Reasonably so, yes.

MR. DUNN: Mr. Ryan, you appeared before the Senate Judiciary Committee during the session of 1889? A. Yes.

Q. When this same question was under investigation? A. That is true, sir.

Q. And I understand you also gave testimony there? A. I did.

Q. I understand that you have now testified that during the year 1885 you came to the Controller's office and offered to the Controller 60 per cent of the taxes due for that year, on the Southern Pacific system? A. Yes.

Q. I will call your attention to a portion of your testimony given there.

THE CHAIRMAN: It should be read or shown to him first, before the question is asked.

MR. DUNN: Mr. Ryan, you can examine your testimony as given there. A. (Examining testimony) I will state, Mr. Chairman, that I do not remember of answering this question in the manner, or as fully as it is set down here: "Have you paid anything on the franchise, railroad, roadbed, rails, and rolling stock? Have they paid anything for the year 1885? No, sir; not on the State Board's assessments. For 1886? No, sir. Anything for 1887. No, sir." Now, Mr. Dunn knows very well that I did pay on short lines, to him, for those years, sums amounting to \$49,000. When I answered those questions, I did not have the question as fully before me as I have it now; and I certainly would have made an answer that we have paid it, if we had paid anything.

Q. Mr. Ryan, if you will take that book and refer to the questions relative to the offer of the tax for 1885, on that page now shown you— A. That was made by Col. Creed Haymond in Court, Mr. Dunn.

Q. You stated that you had made the offer to me. A. Mr. Dunn, I remember that I made the tender to you in an off-hand way, and said that we would give you a stipulation that would hold you harmless for the balance, and agreed to pay whatever balance the Court determined we owed. In addition to that we would not only pay that, but the percentage and the attorney fees, if the Court so held.

Q. The taxes of 1885? A. 1885; at the time I made the tender, and I have got a full statement of it here.

SENATOR MAHONEY: Read it for information, Mr. Ryan. A. Very well. I want Mr. Dunn to see it first. Those were almost my exact words: That the company would stipulate, by its officers and over its seal, that they would pay any balance due if the Courts so determined that we owed, and pay in addition to that the penalties, costs, and attorneys' fees, if they were found due by the Court. I repeated that so often, I will state, Mr. Cross, that it became parrotty with me, and hence I am very glib in calling it over now.

MR. CROSS: This statement that you have made was what you did in connection with the tender which you made in 1885, to which you testified in your examination in chief? A. Yes, sir.

THE CHAIRMAN: Well, you mean an offer—not a tender exactly—do you? A. It was not refused because there was no money in sight.

Q. I say, you made an offer on behalf of the company? A. Yes, sir; I did.

THE CHAIRMAN: You may read that paper now.

(Mr. Ryan read an article published December 10, 1885, concerning the offer to the State Controller of 60 per cent of the railroad taxes for the year 1885, as assessed by the State Board of Equalization.)

THE WITNESS: The \$49,000 is made up of the three years paid as this was paid.

MR. DUNN: Mr. Ryan, the roads upon which you paid the taxes were assessed by the same body and for the same years? A. Yes, sir.

Q. You paid the taxes in full on those roads? A. Yes.

Q. The reason that you refused to pay the tax on the balance of the roads was because you believed the assessment was too high upon them? A. Fully 40 per cent too high, Mr. Dunn.

Q. Now, can you state, Mr. Ryan, to this committee the time, or have you any paper to show, when you made a tender for the taxes of 1886? A. I cannot make a statement further than I have made, because I have no memorandum of it, sir, and I will not make a statement, without something before me to refresh me, further than I have already made, Mr. Dunn. I did make a memorandum of it at the time (and I think it must be in Col. Creed Haymond's papers), for whatever year it was.

Q. Can you make a statement to this committee of the time, or have you any paper to show, that you made an offer of any per cent of the taxes of 1887; at any time, to the Controller? A. Oh, it is in the same category, Mr. Dunn, as 1886.

MR. DUNN: I have simply to say this, Mr. Ryan, that, at this time, I have no recollection of it.

THE WITNESS: Certainly; if I hadn't my memorandum, I would not testify to it, sir.

MR. DUNN: That statement I recall.

THE CHAIRMAN: Mr. Ryan, I understand you to say that one reason that the company did not pay these taxes was because they thought there were elements in the assessment that were illegal. What elements do you refer to? A. One of the elements discussed, I think; that is, discussed in our law department, was the Federal franchise.

Q. That was one of them? A. That was one of them, sir. And what other element entered into it, I do not know—in their discussion; but they considered, for whatever additional element went in, it made it excessive, and at least 40 per cent higher than it should have been assessed.

Q. Mr. Ryan, what constitutes the Central Pacific road upon which the Government of the United States has a mortgage? A. From San José through Sacramento, and so on East; through the State of Nevada to a place called—five miles this side of Ogden; I forget the name; it is no station at all, hardly; it is five miles this side of Ogden, and the Central Pacific pays a rental for that five miles into Ogden.

Q. Well, then, in what manner does the road run from San José to Sacramento? By the way of San Francisco? A. It runs from San José, by the way of Niles, through the cañon to Pleasanton; from Pleasanton northerly, through Stockton, to Sacramento.

Q. What proportion to the whole amount of taxes of the Southern Pacific Company does this Central Pacific road bear? A. I would state that I can only testify to that from the figures that are before me, because, as I say, I have no local taxes, but estimate it. Of these \$1,900,000 the Central Pacific is assessed for \$985,902.

Q. It is about one half of it, then? A. Very nearly, sir. That is, for 1885, 1886, and 1887 I am basing my answers on.

Q. Would it be different now, practically? A. No; practically, it would not be.

Q. Approximately, it would be the proportion now. A. Approximately, that would be the proportion now, sir.

SENATOR MAHONEY: Is a mortgage held by the Government on this road? A. It is a mortgage on the road.

Q. Well, do you think the Central Pacific Railroad ought to pay its taxes on that road while it is mortgaged? A. That has been discussed very frequently in our legal department, and they have always called in the decision read by Senator Cross night before last, or last night, in the case of somebody against Tams.

MR. CROSS: The people of the State—the Board of Supervisors, really. A. Against Mrs. Tams. Judge Harvey Brown called my attention to it, and holds positively that the Central Pacific Railroad is in exactly the same category in California.

SENATOR MAHONEY: You stated that you were willing to get a bill so you could pay those taxes, notwithstanding— A. (Interrupting.) And get them out of the way so that there will be no further conflict, Senator. It meets all of us at every turn.

THE CHAIRMAN: Mr. Ryan, are you familiar with the books of the company showing who the original stockholders of the Central Pacific Company were? A. I am not, Senator.

Q. Who, in your office, or in your establishment, could give me that information? A. I think G. L. Lansing has the archives from the beginning, and it must appear in the archives. He is the present Controller and Secretary of the Southern Pacific Company, and Secretary of the Central Pacific Railroad Company as well as the Southern Pacific Company.

Q. Do you know of your own knowledge, from your connection with the company, or in any way, what counties were stockholders, and to what extent? A. Only by general notoriety and report; not of my own knowledge.

SENATOR SEAWELL: I want to ask the witness one question. You stated awhile ago, Mr. Ryan, that you thought the Federal franchise was assessed on these roads; for that reason you refused to pay the taxes? Did you pay the taxes for the California Pacific, Northern Railway, and the San Pablo Railway, for those years? A. I would like to have the reporter read the answer that I gave you awhile ago.

[Reporter read as requested.]

Q. I do not know that you said that you refused to pay them on that ground, but you said you thought the franchise was assessed. That refers to the two specific roads? A. I was speaking, Senator, more particularly of the Central Pacific.

THE CHAIRMAN: But it refers to both of them, does it not? A. Both, yes.

SENATOR SEAWELL: But the taxes were not paid on those roads that I named? A. No sir.

Q. Why not? A. Because they were considered excessive, onerous and out of all proportion with the assessed value of other property in the State made by local Assessors.

MR. CROSS: Mr. Ryan, which others of the roads concerning which you have testified, were roads receiving land grants from the United

States on account of public services which such roads were to perform?
A. The Southern Pacific Railroad.

Q. What about the Oregon road? What do you call that? A. The California and Oregon road is a portion now, and the Central Pacific also.

Q. It was, as originally platted, a land grant road, was it? A. Yes.

Q. Receiving a grant from the Government in consideration, in part, for certain services which they had to perform for the Government?
A. That is correct, sir.

Q. How was it with the San Pablo and Tulare road? Did they have a land grant? A. No, sir.

Q. Had none? A. No, sir.

Q. Now, in reference to some questions asked you with regard to the franchise, or the Federal franchise, having been assessed in various years—are you familiar with the form which the records have been in, in regard to that matter, in the office of the State Board of Equalization? A. I am familiar with some of the years, not each year.

Q. What was the first year in which, in terms, the Federal franchise was excluded from the assessment on their records? A. 1888—not in terms of exclusion but—

Q. State the terms. A. It was more explicit in what was assessed, and a division was made; not all assessed in one lump sum—the franchise was assessed separately.

Q. What change was made in the method of recording the assessment of the franchise in 1888? A. The State Board of Equalization, each year, sends to every railroad corporation blanks to be filled out, sworn to, and returned. In 1887 there was nothing but the plain, printed “franchise, road, roadbed, rails, and rolling stock.” In 1888 it was interlined, on the copies that we received for the Southern Pacific Company—interlined by saying: “What is the value of the franchise within the State, derived from the State.”

Q. That is it? A. “Within the State and derived from the State” was in manuscript.

Q. That was the first time that the record of the assessment was ever made in that form, was it? A. The first time since the State Board has been in existence.

Q. Now since the record began to be made up in that way by the State Board of Equalization, all of the assessments have been paid? A. Yes, every dollar, sir; both local and assessed by the State Board of Equalization.

Q. Previous to that they were simply made up, an assessment of the franchise, without stating what franchise, or within what limits? A. That is correct, sir.

Q. And the railroad company was required to furnish, up to that time, a statement of the value of its franchise, without limitation as to what franchise? A. Yes.

Q. In 1888 the official documents were so reformed as that, from that year and ever since, the record has been of an assessment of the franchise of the railroad company within the State and derived from the State? A. That is it, sir.

Q. And since that time the tax has been paid in full? A. Yes.

MR. DUNN: Mr. Ryan, these blanks that are sent to you, as tax agent of the Central and Southern Pacific roads, request you to furnish a

statement of the value of what, relative to franchises? Does it say franchises or franchise? A. Franchise.

Q. Not franchises? A. Not franchises.

Q. You did not intend to say here that you know of your own knowledge that the State Board of Equalization assessed the Federal franchise, did you? A. I knew it from hearsay—by what some of the members of the Board have told me themselves, and in discussions with them, and their subsequent acts bore it out to my satisfaction.

Q. Now I understood you to state further, in answer to a question by Senator Cross, that, since the records of the State Board of Equalization declared that the State franchise only is assessed, you have paid the taxes on all these roads in full. That includes, of course, the California Pacific, the Northern Railway, San Pablo and Tulare, and all—of course their lines I believe are now consolidated. A. Yes.

Q. Well, of course, that question did not arise in regard to the Federal franchise, and could not have arisen for any of the previous years, 1887, 1886, or 1885, with regard to the California Pacific, Northern Railway, and the San Pablo and Tulare, so of course that question cut no figure in the determination to pay or not to pay taxes on those roads for those three years?

THE CHAIRMAN: He has already replied to that. He said he thought the tax was excessive.

A. The question of Mr. Cross was not quite broad enough. I might have said, further, that we paid them because the State Board of Equalization itself acknowledged that they had formerly assessed the Federal franchise, and did, in 1888, begin to, and did, that year, eliminate it; they so acknowledged.

MR. DUNN: I know, Mr. Ryan, that proposition was disputed. A. Well, I shall dispute any one who disputes it, with all due deference to the gentleman. You are entitled to your own opinion.

MR. DUNN: I happened to be present when those assessments were made.

MR. CROSS: Were you present in Court in San Francisco when testimony of members of the State Board was taken upon that point? A. I was.

Q. Did you hear any one, who was a member of the State Board, testify that the assessment for previous years was made in the manner in which you state? A. Yes; and previous to that, also, in your examination, or rather in the examination had under you, in which you took part in 1889, before the Judiciary Committee. It is of record that the Chairman of the Board, of that year, did testify that the franchise was included—the Federal franchise. It is in that book.

Q. So that when you stated that you had that knowledge from hearsay, the hearsay includes the testimony of members of the State Board given in Court, and given on a hearing before the joint Judiciary Committees of the two Houses of the Legislature of California in the year 1889? A. Yes, sir.

SENATOR SEAWELL: I move to strike out all that testimony, on the ground that it is indefinite and does not apply to any particular person. Of course, if Mr. Ryan will name the persons, and the places, and the time, why that will be some evidence.

THE CHAIRMAN: There is a judicial record upon that subject some—

where, is there not? Either a finding of a Court or something? A. I do not know.

THE CHAIRMAN: Mr. Shanahan stated in his argument—and that is about all I know about it—that that was the finding of a Court, and that that finding was false, and intimated that it was by some connivance of the Attorney-General that it was there. There is evidence of that somewhere, which would be better evidence than this.

MR. CROSS: I will state that I recognize the fact that this is not the best evidence.

THE CHAIRMAN: Very well; let it be stricken out.

Whereupon the committee adjourned until to-morrow afternoon at two o'clock.

FRIDAY, January 27, 1893—2 P. M.

S. C. DENSON.

Sworn.

MR. CROSS: What is your name? A. S. C. Denson.

Q. Where do you reside? A. San Francisco.

Q. What is your business? A. I am a lawyer.

Q. Were you acquainted with Mr. John P. Dunn, who was State Controller during the years 1885, 1886, and 1887? A. I was; I had the pleasure of Mr. Dunn's acquaintance ever since he was elected State Controller of California.

Q. Were you also acquainted with Mr. E. B. Ryan, the tax agent of the Southern Pacific Company? A. Yes, sir; I have known him for a long time.

Q. What, if anything, do you know concerning any tenders, or attempts to pay moneys on account of taxes claimed to be due to the State of California, during the years 1885, 1886, and 1887? A. During those years, beginning with the year 1883, and ever since then, I have been in the employment, or at least, have been retained by the Central Pacific or Southern Pacific Company. I lived in this city during those years, 1885, 1886, and 1887. As local attorney for the company, Mr. Ryan, called on me to go with him to make tenders, or rather I should say, offers of payment of a portion of the taxes claimed against the railroad companies. There was a number of assessments against a number of different companies, as I recollect.

Q. They were the roads which are practically the roads now operated by the Southern Pacific Company? A. Yes; they were then under the general management of the gentlemen who controlled the Southern Pacific.

Q. Now you say, "to make an offer of payment." Explain that to the committee, will you; what the procedure is for the payment of taxes assessed by the State Board of Equalization, and then what you did? A. I have not had recent reference to the law, but my recollection of it is that in order to pay moneys into the State Treasury, a person must first go to the State Controller and get the permit or order—I do not know the specific legal technical name for it; it is, at any rate, an official authorization from the State Controller by which moneys may be received by the Treasurer.

Q. On taxes claimed against properties assessed by the State Board of Equalization? A. Well, my recollection is that that law was general to pay any money into the State Treasury that a person owed. Perhaps I am in error about that, but that is my present impression; that in order to pay any money into the State Treasury you must first have a voucher, in order that the auditing or controlling department of the State might have a trace of the amount of money that went into the State Treasury.

Q. A proper check? A. A proper check on the treasury. That is my understanding of it. And in order to pay the money into the State Treasury, we had first to get permission from the State Controller. We could not go to the Treasurer and pay money in and get a receipt for it, nor he could not receive it without some authority from the Controller's department. We went, I think, three different times in successive years. Of course this was some time ago. I made a memorandum at the time, but I am not able to find it among my papers. I think, probably, I sent it to Colonel Haymond, of the law department of the company.

Q. He was, at that time, the head solicitor, was he? A. Yes, sir. And had especially in charge the matters of taxation, as I understood it. I was in the habit of reporting to him any business that I transacted for the company, and I think it is possible that the memorandum I made may have been sent to him; I cannot find it among my papers.

Q. What was done? A. We went to Mr. Dunn's office. He received us very pleasantly, as he always did everybody, and Mr. Ryan did the talking. He said, in effect—I cannot undertake to quote the words—"Mr. Dunn, I want to pay on behalf of the railroad company." I don't know whether he said Southern Pacific, or Central Pacific; at any rate, it was sufficient so that Mr. Dunn understood what he wanted. He had a memorandum with him at the time, of the amounts assessed against each—assessed respectively against the roads that were represented. There was a number of them—I don't remember—half a dozen, or such a matter—and offered or requested an authorization from Mr. Dunn to pay into the State Treasury 60 per cent of the amount of the tax as assessed.

Q. What did Mr. Dunn do about it? A. He said he could not do it—I think because the law did not allow him to receive any less than the entire amount. At any rate, he declined to accept it.

Q. Declined to accept on the proposition of allowing 60 per cent to be paid in? A. Yes. He would have made it for a higher amount. I do not know as he said so, but we understood it at the time that if we had offered him the entire amount he would have given the order. On one occasion, when I was present, we did pay on some of the smaller and shorter lines, and he gave us an order, after declining to give the order for the receipt of the taxes at 60 per cent on the entire assessment. Then Mr. Ryan said: "Then I will pay the entire amount on certain roads," a memorandum of which he had, and called his attention to at the time, and Mr. Dunn did give the order. I waited with him, and went into the Treasurer's office and paid the amounts. My recollection is it was somewhere from \$15,000 to \$20,000. In speaking with Mr. Ryan to-day he reminded me that it was \$17,000 and something, which I have no doubt was the correct amount. My recollection before speaking to him was that it was somewhere between \$15,000 and \$20,000.

Q. Judge Denson, will you please look at that slip of paper now handed you?

[Witness examines "Exhibit B."]

Q. Are you able, after examining that paper, to state upon what railroad properties you tendered the payment? A. I have no doubt they were the exact properties mentioned in this printed slip.

Q. Will you please name them? A. According to my recollection—and I will read them off—"the amount of taxes upon the several roads, as per such assessment, is as follows: Central Pacific Railroad Company." I know that was included, but I do not remember the precise amount.

Q. You need not state the amounts; just the roads. A. Southern Pacific Railroad Company—I know that was included. California Pacific Railroad Company—I know that was included. "N. R. W. Co."—that is the Northern Railway Company, I suppose—I don't remember so definitely about that; I have no doubt it is correct; however, I know there were a number of roads. "S. P. and T. Railroad Company"—that likewise, I have no doubt is correct. "The Amador Branch Railroad Company"—my memory seems a little more distinct to that; I am quite clear that that was one. "Sacramento and Placerville Railroad Company"—that I know. It is a road that runs from here, and I remember the fact as to that. "Stockton and Copperopolis Railroad Company, Pajaro and Santa Cruz Railroad Company, V. and C. L. Railroad Company"—that is the Vaca Valley and Clear Lake Company. That I don't remember so distinctly about, but I know generally that all those roads were then under the management of the managers of the Southern Pacific, and I knew at the time all the roads that were under their management; at least, I thought I did.

Q. They were represented in that offer? A. Yes, sir; they were all included in that offer. I will say in this connection, the reason why I remember that more distinctly is, that at my office on K Street, in this city, in the Metropolitan Building, either before coming up here with the tender, or after returning there—I am not clear which—but, at any rate, on that day—I made a memorandum and figured up the amount of the 60 per cent, and I made a sort of tabulated statement, and put down these various matters. Whether I preserved that, or what I did with that memorandum, I do not now know. But that enables me to remember the fact that all the roads which I knew of that were under the management of the Southern Pacific people were embraced in our proposition.

Q. That is, so much of the property as was assessed by the State Board of Equalization? A. Certainly.

Q. You had nothing to do with the local county assessments of railroad properties? A. No; we had nothing to do with those.

Q. State whether or not that offer was made in good faith for the purpose, if permitted, of paying into the treasury of the State at that time 60 per cent of the amount claimed to be due to the State, from those respective railroad properties for those years? A. It undoubtedly was in good faith, and we were prepared to pay the money.

Q. State as nearly as you can, what years it was that those tenders were made for? A. My best recollection is that the first was made in 1885, and the others in the two succeeding years, 1886 and 1887.

Q. If there were in the history of the road three years in which no

taxes were actually paid, with your knowledge of the subject, would it be those three years? A. I think so; yes.

MR. CROSS: Mr. Chairman, the witness is now in the hands of the committee.

MR. JOHN P. DUNN: Judge Denson, your attention has been called to this offer made in 1885. Do you remember the circumstance of computing the amount due at 60 per cent that would be paid, and you concluded that the amounts stated in there were about correct, I believe—as I understood you? A. If you will allow me an explanation right there, Mr. Dunn—I judge that just by running my eye over these amounts, the impression left on my mind, without looking at these figures at all, as to the amount of money that we were prepared to pay on that occasion, was that it was between \$400,000 and \$500,000. I think \$450,000 or \$460,000. And that aids me, more than anything else, in concluding that these figures are probably right. I have not made the exact computation, but simply a sort of mental calculation as I ran along through. I do not know how near I would be correct.

Q. Judge, can you call to mind at this time any circumstance in connection with the tender made in 1886, so as to convince you beyond any doubt, that such a tender was made? A. I remember the circumstance of Mr. Ryan coming into my office, in his smiling way, one morning, and saying "I am here to go and make the tender again. Are you ready to go?" and, of course, I went with him. I remember that circumstance distinctly, and I remember that I was in your office more than once.

Q. Then do you remember a similar circumstance in 1887? A. The matter is not as definitely in my mind as to that. I have no particular circumstance, and I do not know whether this circumstance that I speak of occurred in 1886 or 1887. I remember that occurring once. My best recollection is, and I would not undertake to say positively as to a date so long ago, that I did not have a memorandum to refer to; but my best recollection is that we went three successive years. Now, to fix it at an exact date, and to say that it comes up in my mind, and to state that it was in 1885, 1886, or 1887, is more than I would like to do.

Q. Can you recall a proposition, made during the years 1883 or 1884, relative to the payment of a certain portion of the tax due to San Diego County? A. I do not recall that. I had something to do with those taxes. That was in 1883.

Q. 1883 or 1884? A. In 1883 I assisted Judge Sanderson around in the trial of some tax suits in the United States Circuit Court in San Francisco, and that extended over possibly into 1884. You may be right about that, I do not remember.

Q. Now, I judge from the type here that this clipping was taken from the Sacramento "Record-Union" of that date. It seems to me that it might be possible to refresh the mind of yourself and Mr. Ryan, and probably to get information for this committee, if the files of the "Record-Union" of 1886 and also of 1887 were searched over. I simply have this to say, Judge, that I have no recollection at all of you ever coming to my office to offer to pay, with Mr. Ryan or anybody else.

THE CHAIRMAN: Mr. Dunn, the committee will be ready to take your testimony whenever you are ready to give it.

MR. CROSS: It seems to me this should be an examination, and should

not be an attempt to make statements, not under oath, by a party who can go under oath when the proper time comes.

THE CHAIRMAN: Let us proceed in order. This is a cross-examination simply, of the witness.

MR. JOHN P. DUNN: Mr. Chairman, I have this to state: I am not an attorney, and there is no attorney, so far as I am aware, representing the State; and I do not know, of course, how to proceed in a legal and proper way of asking these questions, but I certainly have no intention to be disrespectful to Judge Denson, nor have I ever desired to do so.

THE CHAIRMAN: The Chair did not understand that you had. It simply ruled that such statements of yours were not proper in this connection. You have a right to ask the witness questions, and if you wish to make any statement to the committee at any time, it will either hear your statements of fact or your argument. Have you any further questions?

MR. JOHN P. DUNN: I have no further questions.

MR. CROSS: Judge Denson, do you remember whether or not the years when these tenders were made, were the years on account of which no taxes were received from these various companies? A. I remember that distinctly.

Q. Then these tenders, or offers, whatever they are, were in those years for which no taxes were paid into the treasury? A. Yes, sir; that I know.

MR. DUNN: Let me say right there, if you will pardon a question, the tender that was made in the case of San Diego County, a certain per cent of the amount due to San Diego County was paid, Judge, under certain conditions. Do you recollect that? At the time that tender was made no money had been paid for the taxes of that year. This was a certain per cent of the amount due to San Diego County? A. If the committee will permit, I would like to ask Mr. Dunn to state to me his recollection of that circumstance, to see if I can remember it; I do not now remember it.

MR. DUNN: Well, that would bring back the statement I made before. I do not know but that it is objectionable.

THE WITNESS: I would request Mr. Dunn to state it, because it might bring to my recollection something I do not remember.

THE CHAIRMAN: I understand Mr. Dunn to say that he does not remember any such circumstance, and therefore he cannot give you the details of it. He does not remember it at all.

MR. DUNN: I was trying to bring to the Judge's mind his recollection of any other time beyond the year 1885, when a tender was made when he was present. As I stated before, my recollection is that the Judge came once. Now, if he came any other time it might have been possible that a tender was made for a portion of the taxes of 1883. That is what I wanted to call your attention to. A. Well, I will say in relation to that, Mr. Chairman, I do not have any recollection of that, and I do not think it occurred; and the reason why I do not think it occurred, chiefly, is that I had nothing to do with the San Diego County taxes. There were suits in this city against a number of these railroad companies, brought in the name of the State, I think, and some half dozen suits—something like that—and we transferred them to the United States Circuit Court, and I do not think the San Diego case was among them, and I did not

have any special authority in reference to that. These cases when they were first brought, according to the custom of the company, were sent to me. The papers were served on the secretary or some officer in San Francisco, and through the law department were forwarded here to me for attention, with the suggestion to prepare papers for a transfer to the Circuit Court, which I proceeded to do in connection with somebody—I do not remember now just who—from the law department. I think I went to San Francisco, in fact, and prepared the papers, perhaps there, for the transfer of these cases to the Circuit Court; and it was those cases particularly that I assisted in the trial of in the Circuit Court, but I do not remember the San Diego case particularly among them.

MR. DUNN: Judge, I am not referring to the suits brought for the taxes of 1880, 1881 and 1882, wherein suits were brought by the District Attorneys of the various counties through which these roads run, but for the taxes of 1883, which were collected under the Act passed by the session of 1883, where the law required the Controller to make the entry. A. I cannot say that I did not go with somebody to make such a tender; but all I can say is, that I have no recollection at all of that, and that the only time I can recollect of making the offers to pay were when we were offering to pay on a number of different roads at a time and not on any one particularly. It might have happened but I cannot remember that.

W. W. DOUGLAS.

Recalled.

MR. CROSS: Mr. Douglas, upon yesterday when you were being examined before the committee, you were requested to prepare tables of the taxes of the roads involved in this investigation, from the year 1888 up to the present time from the official records found in the State Controller's office. Have you prepared such tabulated statement? A. Yes, Yes, sir.

Q. State whether or not you have such tabulated statements with you? A. I have.

Q. Will you please present them?

[Witness does so.]

MR. CROSS: I offer those in evidence, Mr. Chairman, before this committee.

[They were marked "Exhibit C."]

Q. Will you please state the aggregate amount of taxes which has been paid by those roads under assessment made by the State Board of Equalization for the respective years? I believe you have it all tabulated on the list. For 1888, how much? A. For 1888, \$521,679 70. For 1889, \$582,159 15. For 1890, \$528,301 89. For 1891, \$514,523 64. And the first installment of 1892, being one half of the taxes of the entire year, \$246,481 06.

Q. Showing that all taxes claimed to have been assessed by the State Board upon those railroad properties since the year 1887 have been fully paid? A. Yes, sir.

C. M. COGLAN.

Sworn.

MR. CROSS: Mr. Cogan, what official position, if any, do you hold in the State of California? A. Clerk of the State Board of Equalization.

Q. Have you with you the minutes of the State Board of Equalization, of the proceedings of the State Board of Equalization, from the year 1883 to the present time? A. I have.

Q. Will you please produce them? A. They are here.

Q. Are the two books now before you official records of the minutes of the proceedings of the Board of Equalization regularly kept in your office as such records? A. They are.

Q. How long have you been Secretary of such Board? A. About two years.

Q. Since you have been such Secretary, who has kept those minutes? A. I have.

Q. In the official books provided for the purpose? A. Yes, sir.

Q. State whether or not any changes have been made in those records since you became Secretary, of matters preceding the date when you became Secretary? A. There have been no changes.

Q. Will you please turn to the record of the assessment of railroad properties for the year 1883, on page 212? A. I have it.

MR. CROSS: Mr. Chairman, I offer in evidence portions of the record of a meeting held on August 17, 1883. If any gentlemen present or any member of the committee desires to examine them, he has opportunity before we read them.

THE CHAIRMAN: Well, go on.

MR. CROSS: There are portions of these minutes, reading consecutively, which do not relate to the matter under investigation; and, with the permission of the committee, I will only read such portions as are pertinent to this inquiry.

"Present: C. E. Wilcoxon, Chairman; John Markley, L. C. Morehouse, Charles Gildea, John P. Dunn. Minutes of previous meeting were read and approved. Mr. Markley moved that the Central Pacific and Southern Pacific Railroads be each assessed as a whole or unit, and not be assessed in divisions as was done in 1882. Mr. Gildea said that if Messrs. Delmas, Terry, Rhodes, and the other lawyers to whom we had submitted the question, had not decided that the roads should be assessed as a unit, he would doubt the propriety of so assessing them. The motion was put and carried unanimously and so ordered. Board adjourned until to-morrow. E. W. Maslin, Clerk."

MR. CROSS: Mr. Cogan, I present to you a document indorsed "Opinions of Delmas, Terry, Rhodes, Baggett, et al. in reference to powers of the Board," and indorsed, "Filed August 16, 1883, E. W. Maslin, Clerk," and ask you if you have ever seen that document before? A. I have.

Q. Where was it when you saw it? A. Filed in the archives of the State Board of Equalization.

Q. In its proper place? A. Yes; among the opinions of the Attorney-General and others.

Q. Do you know that signature, "E. W. Maslin?" A. I do.

Q. Is that Mr. Maslin's signature? A. It is.

MR. CROSS: Mr. Chairman, if there is any question as to Mr. Maslin

having been the Clerk of the State Board of Equalization at the date on which this document appears to have been filed, namely: August 16, 1883, I suppose I ought to make that proof first.

THE CHAIRMAN: There is no question about that, is there?

MR. CROSS: That will be conceded, I suppose. Then, in connection with this record which I have just read, I will offer in evidence the following documents, being the documents just referred to by the witness, Mr. Cogan:

"SACRAMENTO, August 16, 1883.

"History of the accompanying telegrams. Mr. Dunn, at the request of the Board, proceeded to San Francisco to consult Messrs. Delmas, Terry, Rhodes, Baggett, Waymire, and others as to certain questions hereto annexed. When he returned, the Board being in doubt as to the opinion of those gentlemen upon the question whether the railway property should be assessed as a whole, or each part be assessed separately, requested Mr. Dunn to telegraph for their opinion, which he did as per copy annexed. The answer of Mr. Delmas is also appended. (Signed) E. W. Maslin."

The following is a telegram, dated August 16, 1883: "San Francisco, 16. To John P. Dunn, State Controller, Sacramento." This comes a little irregular in order, but it is the order in which the documents are arranged. "I understood it to have been the unanimous opinion of the counsel assembled in my office yesterday, that the course which you suggest is correct, namely: to assess the franchise, roadway, roadbed, rails, and rolling stock, as a unit, and not each separately. D. M. Delmas."

"Sacramento, August 16, 1883. D. M. Delmas, San Francisco: The Board heretofore, each year, valued and listed on their books separately the franchise, roadway, roadbed, rails, and rolling stock, but in the statement to the Assessors merely stated the whole value of the property. Now, would it be legal to assess these parts as a whole? That is to say, in this wise: The Board assess the franchise, roadway, roadbed, rails, and rolling stock to the, say, Central Pacific Railroad, at the sum of so many dollars. John P. Dunn." [Copy of telegram sent to D. M. Delmas by John P. Dunn, at request of the Board.]

"Sacramento, August 16, 1883. History of the opinion. The Board, desiring to be sure upon the many questions presented in assessing railroads, requested Mr. Dunn to proceed to San Francisco and consult Messrs. Delmas, Terry, Waymire, Baggett, and Rhodes upon those questions, and the Board prepared a series of questions, as follows:"

The answers of the gentlemen consulted follow each question. E. W. Maslin, Clerk.

Now the questions and answers:

Q. "Should the State Board assess railroads by divisions, as they were in 1882, or a whole, as they were in 1880, remembering that the divisions of the Central Pacific are operated together, and that the Southern Division of the S. P. R. R. is operated by the Central Pacific Railroad, and the Northern Division by the Southern Pacific Railroad." Then, in a different handwriting, is the answer: "Assess as a unit."

Q. "How should assessments be transmitted to County Assessors or Auditors under the law of 1883?"

San Francisco and North Pacific Railroad Company vs. State Board, Vol. 8, page 1051, Pacific Law Journal; C. P. R. R. Co. vs. State Board,

Vol. 8, page 1070, Pacific Law Journal. And the answer, "Transmit the statement merely."

Q. On the third Monday of August the State Board meets as a Board of State Equalizers. Can they at such meeting equalize railroad property as provided in the law of 1883, or must they be governed by the case of Wells, Fargo & Co. vs. said Board, which says they cannot consider individual assessments?" A. "No; but this is not intended to deny the power to change the whole assessment of the railroad."

Q. "On the first Monday of August the State Board meets, and must by the third Monday in August, assess the railroads operated in more than one county, and thereafter transmit these assessments to the County Auditor. Thereafter the Board meets as a State Board to equalize the State property. Now, if the State Board should raise the entire assessment of a county, do they raise the assessments made by the County Assessors, or do they also raise the assessment they have made on railroads?" A. "Only the assessments made by County Assessors."

Q. "Were the descriptions furnished by the railroad companies and used by the State Board sufficient?" A. "Yes."

"Dated August 15, 1883. Signed, E. C. Marshall, Attorney-General, D. M. Delmas, D. S. Terry, A. L. Rhodes, J. M. Lesser, J. A. Waymire, W. T. Baggett."

This set of documents being connected together is indorsed: "Opinions of Delmas, Terry, Rhodes, Baggett, et al., in reference to powers of the Board. Filed August 16, 1883, E. W. Maslin."

As this is an official document, Mr. Chairman, I will not ask to file it with this committee, as its proper place is amongst the files.

Reading again from the minutes of the State Board of Equalization: "Saturday, August 18, 1883. Board met. Present, C. E. Wilcoxon, Chairman; John P. Dunn, L. C. Morehouse, Charles Gildea, and John Markley. The Board having requested the presence of the Attorney-General, that officer appeared. The question submitted to the Attorney-General was whether the Board, as the previous Board had done, should assess the franchise, roadway, roadbed, rails, and rolling stock separately. The Attorney-General stated that in his opinion such properties should not be assessed separately, but as a whole, and in one sum. His attention was directed to the form already prepared, wherein the franchise, roadway, etc., are each assessed separately, and finally an assessment was made in one sum of the whole property. The proposition was to use such form so as to meet criticism upon each form of assessment."

What that means will be more apparent when we offer another record. This is contained on pages 212 to 213 of the minute record of the State Board of Equalization. And then when they had put down the value of each item, they had to change the entire assessment, putting them together and giving the total value. That is what this relates to, as you will see presently.

"The Attorney-General strenuously urged the adoption of one form—that is, to assess the franchise, roadway, etc., as a whole. Upon request, he agreed to furnish the Board with his written opinion. The Attorney-General assured the Board that at a consultation held by Messrs. Delmas, Terry, Rhodes, Waymire, Baggett, and himself at San Francisco, at which other questions submitted by the Board were considered, the question above stated was also considered, and it was the unanimous opinion of those gentlemen that the proper and only legal

course to pursue was to assess the several properties named as a whole. Whereupon, Mr. Dunn moved the following:

"*Resolved*, That this Board, when it assess each railroad company, shall assess the franchise, roadway, roadbed, rails, and rolling stock of each company as a whole, and for one sum, and not separately."

"Mr. Gildea seconded the motion, and stated that his vote would be based entirely upon the opinion of the Attorney-General, although it did not entirely meet his approval. And in this Messrs. Markley, Morehouse, and Wilcoxon concurred. Thereupon the motion was unanimously carried. The Board then addressed itself to the discussion of the assessment of railroad properties."

Then follow some motions, which I will read:

SENATOR SEAWELL: Senator Cross, do you think that is evidence of anything on earth?

MR. CROSS: I think it will become so presently, Mr. Chairman. If I am allowed to state a fact or two, I think it will become quite clear just what point it bears upon. The point which this evidence makes was discussed somewhat in the Senate Chamber the other evening at a time when you (Senator Seawell) were unable to be present, but I will state that the fact is this: That up to the year 1888 the discussions in the Board and the results were that the Board was of the opinion that under the Constitution of the State they had to assess whatever franchise the company had, from whatever source; that that was protested against by the representative of the railroad company, who claimed that in making that assessment they should eliminate the Federal franchise. That the Board declined and refused to do that under advice of attorneys who held that every franchise that the Company had was to be included in the assessment; that that course was pursued until the year 1888, when, under a decision of the United States Supreme Court, the Federal franchise was eliminated from the assessment, and only the franchise acquired from the State was assessed.

SENATOR SEAWELL: I understand your object. But is that kind of evidence admissible to prove that? We can cross-examine the man who made that record. It is no more evidence than the evidence of an appraisement would be in Court. It is simply a statement from one party in the case without any privilege accorded to the other of ascertaining whether it is true or not. And I understand our Supreme Court has ruled repeatedly that such evidence as that is not admissible.

MR. CROSS: Well, I am sorry, Mr. Chairman, to differ with the attorney, because as I understand it—

SENATOR SEAWELL: I am not an attorney; I am a committeeman.

MR. CROSS: Well, you are an attorney, are you not?

SENATOR SEAWELL: I am an attorney, yes.

MR. CROSS: Now, I understand the rule of law to be this: That the very highest evidence of what a public body has done, and particularly the Directors of a private corporation, is their minute record of what they have done. If anything transpired that does not appear in the record, that may be supplemented by oral evidence. My impression is very clear on the matter, that the highest evidence of what has transpired before any duly and lawfully organized body is the record which they themselves have caused to be made of it. If anything transpires which was not recorded, evidence may be given of that fact whenever it becomes material. That is my view of the matter.

SENATOR SEAWELL: I have the highest respect for Mr. Cross as a lawyer, but I object to that evidence on the ground that it is not the best evidence.

THE CHAIRMAN: The Chair is of the opinion that, as it tends to show a fact in relation to the assessment for those years, and one of the ingredients that enter into it, the testimony is competent.

MR. CROSS (continuing): "Mr. Dunn moved the property of the Central Pacific Railroad Company be assessed at \$38,542,080. No second to motion. Mr. Markley moved that the property be assessed at \$18,000,000. Mr. Morehouse seconded the motion. Mr. Dunn moved, as an amendment, that it be \$38,542,080. Mr. Gildea seconded the amendment to the motion. The amendment to Markley's motion was lost by the following vote: Ayes, Dunn, Gildea; noes, Markley, Morehouse, Wilcoxon. The original motion by Markley was put, and carried by the following vote: Ayes, Markley, Morehouse, Wilcoxon; noes, Dunn and Gildea." On page 215: "Mr. Morehouse moved that the property of the Southern Pacific Railroad Company be assessed at \$12,000,000. Seconded by Mr. Markley. Mr. Dunn moved, as an amendment to the motion, that the amount be \$22,000,000"——

THE CHAIRMAN: Mr. Cross, I do not like to interrupt you, but I do not see precisely the relevancy of that part in reference to the motions made by the different members of the Board, except as to the final action.

MR. CROSS: Very well, then; I will confine it to that one matter. I offer in evidence from the same record, at page 275, being assessment of 1884: "Saturday, August 16th, 1884. Mr. Dunn moved to assess the Central Pacific Railroad at \$24,000,000. Seconded by Mr. Gildea, and motion carried by following vote: Ayes—Dunn, Gildea, Markley, Morehouse, Wilcoxon."

The final result, on page 215, was \$13,000,000.

On page 276——

THE CHAIRMAN: Just read the amount; it will be understood that it was passed. Let us shorten the record as much as we can.

MR. CROSS: Very well. The assessment for that year of the Southern Pacific was \$17,000,000.

I offer in evidence the assessment of these same properties for 1885, found on pages 323 and 324 of the same book. The assessment is of the date of August 15, 1885. The Central Pacific of that year appears assessed at \$22,000,000, and the Southern Pacific at \$17,000,000.

For the year 1886 the record is found at pages 374 and 376 of the same volume, dated August 14, 1886; all the members of the Board present. The Central Pacific is assessed at \$20,000,000; the Southern Pacific was assessed for 1886 at \$17,000,000.

For 1887 I offer the record on pages 423 and 425, showing that the Central Pacific was assessed for that year at \$20,000,000; the Southern Pacific was assessed that year at \$16,500,000.

I now offer the record of the assessment of 1888, found at page 27, of the next volume, which shows that the method of assessment was changed. And this record I will read a little fuller than some of the others, as that was just the time when this decision had been rendered that the Federal franchise could not be taxed. They were acting on that then.

"Monday, August 17, 1888. Board met. Present: all of the mem-

bers. The Board invited the Attorney-General to be present to consult with the Board in reference to the assessment of railways, so as to have the same conform to the decision of the United States Supreme Court, lately rendered in the railroad tax cases. He recommended that the franchises of the Central Pacific and Southern Pacific Railroad Companies, derived from the State, be assessed, and that the valuation thereof be stated separately in the record of assessments; that the Board assess the moles, bridges, culverts of each road separately, and in respect to certain railroad companies to declare that the steamers used in operating the road were not assessed. That is to say, that the assessment before made be divided, so as to show the valuation placed upon the State franchise of the Central Pacific and Southern Pacific Companies, and upon the moles, bridges, and culverts of each road assessed. Thereupon the Board proceeded to make such assessment, and it was ordered as follows: That the franchise of the Central Pacific Railroad Company, derived from the State of California, be assessed at \$1,250,000; that the franchise of the Southern Pacific Railroad Company, derived from the State of California, be assessed at \$1,000,000; that moles, culverts," etc., be assessed at such and such rates.

Q. Mr. Cogan, are you sufficiently familiar with these records to state whether or not, in the years subsequent to the year 1888, the franchises of these roads were assessed in the same manner? A. I am.

Q. State whether or not, from the year 1888 on, the record shows that the franchises assessed were the franchises of the roads derived from the State of California only? A. These words are inserted in each of the assessments since 1888 of the Central and Southern Pacific Railroads: "Franchise derived from the State of California."

SENATOR SEAWELL: Who makes that entry? A. The Clerk of the Board.

Q. Who is it—yourself? A. Yes; at the present time—not since 1888. He asked me if I was familiar enough with the records to state whether those words were inserted. I stated that I was, because I examined them.

Q. Who was your predecessor? A. E. W. Maslin.

Q. Did he make that entry; that the Federal franchise was excluded? A. He made the entry: "Franchise derived from the State of California."

MR. JOHN P. DUNN: And also, Mr. Cogan, if I may be pardoned an interruption, that steamboats have not been assessed? A. That is not inserted, because they have not been assessed; they are not part of the roadway and roadbed.

MR. CROSS: That is, they are not assessed by the State Board? A. By the State Board.

Q. If assessed, they are assessed by other authorities? A. By the Assessors.

Q. By the Assessors of the counties through which they run, or in which they run? A. Yes, sir.

MR. CROSS: I have no further questions to ask Mr. Cogan.

MR. JOHN P. DUNN: Mr. Cogan, will you please turn to the assessments made by the State Board for the year 1887? A. I have it here.

Q. Will you please read the property assessed against the Central and Southern Pacific roads for those years? A. "Mr. Dunn moved that the Central Pacific be assessed at \$28,000,000. No second. Mr. —"

moved that it be assessed at \$20,000,000. Seconded by Mr. Wilcoxon, and motion carried by the following vote."

Q. What I want to find out is, is the property designated? A. There is no property designated any more than that.

Q. What is the California Pacific? A. The California Pacific is in the same category, "Moved that the California Pacific be assessed." I will state that the record of assessment of railroads shows that it is the franchise, roadway, roadbed, rails, and rolling stock.

Q. The same with the Central Pacific as that of the California Pacific? A. Yes.

Q. The Northern Railway and San Pablo? A. Yes.

Q. And nowhere on the records, as far as you know, do the assessments against the Central and Southern Pacific roads show the assessment of franchises? A. There is no difference up to the year 1888, so far as I have examined it.

JOHN MARKLEY.

Sworn.

MR. CROSS: Mr. Markley, where do you reside? A. Sonoma County.

Q. Were you ever a member of the State Board of Equalization of the State of California? A. Yes, sir.

Q. Are you the same Mr. Markley mentioned in the official records of the proceedings of that Board just presented? A. Yes, sir.

Q. During what period of time, or between what dates were you a member of the State Board of Equalization? A. I was elected in 1882, and held office four years.

Q. That is, from the first of January, 1883. A. Yes, sir.

Q. Until the first of January, 1887? A. I held four years.

Q. During the time that you were a member of that Board did you attend its meetings regularly? A. Yes, sir; I was there at most of the meetings.

Q. State whether or not during that time, when the subject of railroad assessment was being considered by the Board, Mr. Ryan, or any other representative of the railroads involved in this investigation, appeared before the Board? A. Yes; Mr. Ryan, I think, appeared every year.

Q. State whether or not, at such times as he did appear during those years, he claimed before the Board, as a Board, that the Federal franchise should not be assessed against the owners of those properties?

A. There was so much talk backwards and forwards, and so much evidence given, it is pretty hard to tell now from memory, just exactly what happened. When we first met, if you will allow me an explanation—

Q. Put it in your own way. I have not even talked with you about it, but I know you were a member of the Board, and I want the facts.

A. When we first met, prior to meeting, I bought a railroad manual so as to get information, and from that and other sources, I found that the Central Pacific and various other roads were California corporations. I am not a lawyer and do not know that I had a very definite idea of what a franchise was, but my impression was that the franchise was the corporate right to exist and live and do business.

Q. Yes? A. I was under the impression that the Central Pacific had

a right, from the State of California, to live and do business. I also talked to Mr. Maslin, who was Secretary of the Board, and who is a lawyer, whose judgment I have great respect for. He told me he thought they had a Federal franchise also. But when we passed assessments we supposed we assessed that which the railway company gave in in its return. They described there a franchise, and we assessed that franchise. Whatever right they had to live as a corporation and do business as a corporation, I supposed that was the value of it. No time in the assessment do I remember of placing a valuation on a Federal franchise, but a value on the State franchise; nor no time do I remember having voted for franchises in the plural. We assessed one franchise, or a franchise, and whatever franchise they gave in. No member of the Board, according to my memory, ever made a motion there which either included or excluded the Federal franchise. We simply assessed a franchise, whatever that franchise was, and I supposed that franchise was their right to live as a corporation and do business as a corporation.

Q. Or collect tolls and— A. Just whatever franchise there was.

Q. Whatever franchise they had? A. Yes.

Q. That is, in the assessment, you considered whatever right the company had to exist, to carry on business as it did carry it on, or had a right to carry it on—all of that you included in your idea of a franchise? A. Their right to live as a corporation was my idea of the franchise—the franchise which they gave in their return.

Q. Now then, a form was used for them to make return on, was there not? A. I think so. That is my memory of it.

Q. Let me ask you whether you followed that word "franchise" in your official capacity, because that was the word which you found in the Constitution? Have you any recollection about that?

A. Well, I suppose so, because we were supposed to derive our right from the Constitution, and we would try to follow the wording of the Constitution. My own official act has always been to make them as near the language of the statute, which we derived our power from, as possible.

Q. Now, at what time had you any information as to how much of this right to exist and carry on business and charge freights and fares, and that kind of business, was derived from the Federal Government, and how much from the State Government? A. My impression was that it was a California corporation, and I remember reading a decision of Judge Field's in which he refers to it as the "Child of California." And my impression was that it received its principal rights and principal authority to do business, to sue and be sued, from the State of California.

Q. Did you at that time have any knowledge as to what rights had been derived, in the way of franchises, from the United States? A. No; I will say that I was not under the impression or aware that they had a Federal franchise until I talked the matter over with Mr. Maslin.

Q. When was that, do you remember? A. That was during the session, back and forwards. Mr. Maslin gave us advice all the time to assess the property separately. This document is in my handwriting, that you read there. I did not want to assess the road in that shape. I protested against it. This motion that I made to assess the road, not by sections, but to assess it as a whole, does not refer to putting the franchise, roadway, roadbed, etc., together. The road, prior to that time, had been assessed in divisions; the Northern Division etc. and

the proposition was to assess to the whole Southern Pacific all the roads in California. That was the first motion that was made there. It does not refer to the combination or consolidation of all the various items.

Q. Well, up to 1882 and in 1882 were not the items assessed separately? A. It was assessed by divisions, if I remember right. The Southern Pacific Railroad was known as the Southern Division and the Northern Division. The Northern Division was controlled by the Southern Pacific Company, and the Southern Division by the Southern Pacific Railroad Company. They said they wanted to pay their taxes separately, but I was under the impression that they had no right to pay them on one division and then on another division—

Q. Mr. Markley, let me call your attention to the motion which you say you read, and let me see if that will help to refresh your mind. Do you remember whether you ever examined the record of 1882 to see how the road was assessed in that year? A. I am inclined to think I did.

Q. Well, at least during the time that you were there, they did not assess the different items of property separately? A. We never placed a valuation on the separate items. We placed a valuation on the thing as a whole.

SENATOR SEAWELL: What was the assessment for the year 1882?

MR. CROSS: I will offer that in evidence. I commenced with 1883, but I will go back. Here it is. Let me read a little of that, because that will give point to these questions. I offer in evidence from the record of the meeting of Wednesday, April 26, 1882, on page 98: "Central Pacific. It was moved by Mr. Kenfield, seconded by Mr. King, that the Central Pacific Railroad, main trunk, be assessed per mile as follows: Franchise, \$3,000; roadway, \$500; roadbed, \$10,000; rails, \$6,000; rolling stock, \$7,500; total, \$27,000. Carried by following vote."

Now, as to the Southern Pacific: "It was moved by Mr. Kenfield, seconded by Mr. King, that the assessment of the Southern Pacific Railroad, Northern Division, be assessed per mile as follows: Franchise, \$1,000; roadway, \$500; roadbed, \$5,000; rails, \$5,500; rolling stock, \$3,000; total, \$15,000." "It was moved by Mr. Kenfield, seconded by Mr. King, that the assessment of the Southern Pacific Railroad per mile for the Southern Division, be as follows: Franchises, \$500; roadway, \$200; roadbed, \$4,000; rails, \$5,000; rolling stock, \$800; total, \$10,500. Carried by the following vote."

Q. Up to that time, as you have learned from the records, the assessment was made not only in divisions of the roads, but the different items named in the Constitution were separately assessed, were they not? A. Yes, sir.

Q. And after these opinions had been given, then you changed the method as to both, relying upon those opinions? A. I did. The first, though, I thought was right, and the other was wrong. I did not want to differ about it—

Q. Was not the matter, as to whether the Federal franchise should be deducted from the double franchise of the road, discussed by the Board at any time? A. I do not know. There never was any motion made, that I remember of, by any member of the Board that it be included or be deducted. There was a great deal of talk back and forwards among the Board about what should be done, and what should not be done. It is very hard to tell now just what that talk was. But, so far as my formal action was concerned, I do not remember of any member

of the Board ever having formally moved that we do not assess the Federal franchise, or that we do assess the Federal franchise. The motion was to assess the property, and the property was the property included in the return, whatever that may be.

Q. And included in that, as to franchises, was simply the word "franchise?" A. Just simply the one word, "franchise." And until Mr. Maslin told me that he thought they had derived a franchise from the Government, I myself did not think they had a Federal franchise, because I thought it was a California corporation.

Q. In those discussions was anything said about benefits and advantages flowing from the Federal franchise? A. Well, there was talk between them—general talk when the Board was sitting around; something of that kind. I remember that Mr. Maslin and Mr. Morehouse and myself talked about it more than any, because I talked to Mr. Maslin about those things frequently.

Q. They were subjects of discussion, although they never came to a formal vote? A. Never came to a formal vote.

Q. Except what appears upon record? A. Yes.

Q. At that time do you remember the discussions going to the questions of the value of the right of that road, under the Federal franchise, with corporations to exist forever instead of only to exist for fifty years? A. No, sir; I did not know they had such right; I do not know it now.

Q. You did not know anything about that? A. No, sir.

Q. That was not discussed in your presence? A. I do not know now that they have that right.

Q. I am simply asking you if that question was discussed? A. No, sir; I never heard it in my life.

Q. Did that matter come up and be talked about every year, about assessing time, among the members of the Board? A. Well, it was talked about a great deal. The first year of the assessment we did talk about that a great deal. After that, of course, we got down to a certain rule, and we followed that more or less. We had discussed those things before, and that, to a certain extent, settled it.

Q. These different agreements as to methods, which you came to that first year of the new Board, had their effect upon your action in subsequent years as long as the membership remained the same? A. The legal adviser of the Board, the Attorney-General, and these other parties remaining the same, we supposed their advice would be the same. No decision had happened up to that time to change our action and we bowed to the legal advice received from the law officers of this State.

Q. You considered that your duty, I suppose? A. Yes, sir.

Q. And were trying to act in accordance? A. Yes, sir.

Q. Had you heard of that decision, about the illegality of assessing the Federal franchise, before you went out of office, or don't you remember? A. No, sir; I do not remember that I do. I do not think it ever came up until after I went out of office.

Q. Or until after you had performed your duties for that last year? A. No, sir.

SENATOR SEAWELL: I will ask the witness a few questions.

Q. Now, as a matter of fact, in the actual assessment of this road, did you make any assessment other than the value of the actual, tangible property of the corporation? A. Yes; we assessed the franchise, if that is tangible property. We assessed that.

Q. You assessed which—the Federal franchise or the State franchise?
A. We assessed the franchise.

Q. Do you remember what value you placed on that franchise? A.
We did not place a separate value on any of the property.

Q. You assessed it as a unit? A. We assessed it as a unit.

Q. That is, all of the elements that go to make up the road. In the
year 1882 did you assess this road, the Central Pacific— A. I was
not on the Board then, Senator.

Q. 1882? A. No.

Q. In 1883, did you assess the Central Pacific Railroad at \$18,000,-
000? A. I think so.

Q. Do you know the length of the road? A. Six hundred and two
miles, if I remember it right.

Q. And the assessed value per mile at about \$30,000? A. Yes.

Q. When the State Board of Railroad Commissioners endeavored to
regulate freights and fares, do you know what this company claimed
the value of this road was per mile? A. I cannot carry the figures
in my head. I remember reading the reports of the Railroad Commis-
sioners.

Q. Do you remember the evidence of the officials of that company as
to the cost of the road and its value per mile in the contest before the
State Board of Railroad Commissioners? A. I did not hear the evi-
dence, and the only knowledge I have of that evidence is what I have
read in the books or reports of the Railroad Commissioners, etc. I was
not present when the evidence was given.

Q. Do you remember what the claim was? A. I do not remember
the exact figures.

Q. I want to know if you know what the valuation, placed upon this
property by the railroad corporation, was for regulating freights and
fares? A. My impression is it was over \$100,000,000.

Q. Over \$100,000,000? A. That is my recollection, but I cannot
remember the exact figures.

Q. Now as to this franchise. Do you remember what valuation you
placed upon the franchise in the year 1883, if you placed any? A.
We did not place a separate valuation on any of the items.

Q. There must have been some private records showing what it was.
A. I do not think there was. After this document was received here,
we accepted this as our guide in our action, and then we treated it as a
commercial whole—treated the road as a commercial whole.

Q. Now, then, a form was given. Some evidence has come out in that
matter. Do you remember what that form was? Have you any mem-
orandum or any data showing what that form was?

MR. CROSS: We are going to introduce those, Senator. A. The
Clerk had one some time ago.

SENATOR SEAWELL: Will you introduce them now?

THE WITNESS: The County Assessors, Senator, sent out regular
printed blanks to get returns on. The State Board of Equalization
also sent out blanks to the railroad company to get returns on.

Q. Do you know what returns they made? For instance, taking this
company, do you remember or have you looked up the matter so that
you can state to this committee what their return was? A. As to the
value of the total?

Q. Yes. A. No, sir; I cannot tell you. I do not remember. It was

a great deal less than we assessed it, though. I have got an impression,
somewhere in the neighborhood of five or six millions of dollars, but
then I may be off on that.

Q. And is it not a matter of fact that, so far as the differences in the
assessments of 1885, 1886, and 1887 are concerned, the State Board of
Equalization, after that time and after the litigation, the long delays and
the persistent resistance of the payment of taxes, would have assessed
the railroad at \$5,000,000 if the railroad companies had demanded it? A.
No, sir; they would not have done it then. They would not have done
it when I was on the Board, I am satisfied. There was no member on
the Board, when I was on the Board, that would have voted for an
assessment like that. I do not know that the railroad company ever
authorized, or any authorized agent of the railroad company ever said
that "If you will assess this company so and so, we will pay our taxes;"
but I have been told that they would do so and so, if we would do
what was right, and all those things, that they would pay their taxes;
but I do not know as I could tell just now how it was. Those things
were talked about sometimes in a kind of general way amongst the
Board.

Q. Now, from your knowledge, Mr. Markley, as a member of the
State Board of Equalization, and from such investigation as you gave
this matter with an official responsibility in ascertaining the value of
the Central Pacific Railroad, is it not your opinion that the actual
tangible property of that company is worth more than you assessed it
for? Don't you think the property is worth more than you assessed it
for? A. If you will allow me, I will make an answer that is a little long,
but it will give a clearer statement of my ideas of making the assess-
ment. The assessment law of the State of California provides that
every Assessor in the State of California shall take an oath to assess
property at its full cash value.

Q. Yes. A. And when he gets through he swears he has assessed it
at its full cash value. In examining the assessment rolls of the State,
the State Board of Equalization were thoroughly convinced that there
was no property in the State of California, or no county in the State of
California, assessed at its round commercial value; and taking the
Assessors as a jury passing upon the value of property, and their meas-
ure of value being the price property would sell for or be taken in pay-
ment of a just debt from a solvent debtor, we at the time concluded
that the property generally throughout the State would be taken in
payment of a just debt from a solvent debtor, at from 65 to 75 per cent
of its ordinary commercial value. And when I voted to place a valu-
ation upon the railroad company, I made an effort to make it equal
with the other property in the State. I made an effort as best I could.
I spent two weeks making the best investigation I could, working every
evening until one or two o'clock in the night, getting all the information
I possibly could upon the subject; and after I got all the information I
could, I made the best stagger I knew how to make the railroad prop-
erty, in my judgment, fair and equal with the other property in the
State of California.

Q. Well, you do not think, as a matter of fact then, that you assessed
this property for over 75 per cent of its actual merchantable cash value?
A. I tried to make it equal with the other property in the State so as
to make it bear its fair share of the burdens of the government. I

looked at it this way: It would not do to say that every Assessor in the State did not know the ordinary selling value of property. It would not do to say that every Assessor in the State had perjured himself, and when he had sworn he had assessed the property at its full cash value, to say that he had not done so; and the only way I could make things come out the same all the way through, and give them credit for having done their duty, as I was trying to do mine, was to say that the great jury of Assessors throughout the State of California had come to about the conclusion that the property would be taken in payment of a just debt from a solvent debtor, at about from 65 to 75 per cent of its ordinary commercial value.

Q. Then you mean to say that you do not think that you assessed this company above 75 per cent of its actual commercial value, under the rule that you state? A. I got all the information I could, and I made the very best effort I could to vote for a value upon that property that would make it equal with the other properties in the State of California. So that, so far as my action went, the properties of the State would bear, one with the other, their fair proportion of the burdens of government.

Q. Then you think that this property was assessed from 65 to 75 per cent of its actual cash value; is that your opinion? A. Well, I say that I tried to do the best I could. I do not think it is over-assessed.

Q. Well, you can answer this question, yes, or no. Now, you say that the property of the State—and I think it is true, too—that character of property and real estate is assessed from 65 to 75 per cent of its actual cash value; do you think the railroad company for that year was assessed from 65 to 75 per cent of its actual cash value? A. I think that year we concluded that the general average throughout the State was that the property would be taken in payment of a just debt of a solvent debtor at about 75 per cent of its commercial value, applying the same rule to the railroad property.

Q. Then you think that company was assessed at 75 per cent of its actual cash value? A. We tried to apply the same rule to the railroad.

Q. You can answer yes or no. A. Yes, sir; we tried to make it even. SENATOR SEAWELL: That is all on that point.

MR. CROSS: I think, Senator, if you will indulge me, you misunderstood one word that he used all the time. He said a certain percentage of the fair commercial value.

SENATOR SEAWELL: Actual cash value.

MR. CROSS: You were asking the question all the time as to the actual cash value. I would like to call attention to this fact, that really the controlling provision is that provision of the Constitution which provides that all property shall be assessed not at its value, but in proportion to its value.

SENATOR SEAWELL: I understand that as a provision of law, but you have called this witness to show that the Federal franchise was assessed to the company.

MR. CROSS: Was included.

SENATOR SEAWELL: That the company was exorbitantly assessed—outrageously assessed.

MR. CROSS: No, Senator; we have not claimed—

SENATOR SEAWELL: Now, the Northern Railway Company. I see you assessed that for that year \$2,000,000. Was that assessed upon the same basis that the other company was assessed? A. Yes, sir.

Q. And I see that the San Pablo and Tulare Railroad was assessed for \$700,000. Was that on the same basis? A. Yes, sir.

Q. The Southern Pacific Railway was assessed at \$13,000,000. Was that on the same basis? A. Yes, sir.

Q. Now, the Central Pacific Railroad Company in 1884 was assessed at \$38,312 95 per mile; the delinquency was on \$24,000,000; the amount of tax paid was \$108,480. Was that assessed that year upon the same basis? A. Yes, sir.

Q. Now, the San Pablo and Tulare Railroad was assessed at \$20,652 17 per mile; value of the property delinquent was \$950,000—amount of taxes levied for State purposes, county purposes, etc. Was that assessed on the same basis? A. Yes, sir; the four years I was on the Board we used the same effort.

Q. That is 1883, 1884, 1885, 1886, and 1887? A. No; 1886.

Q. Well, you always assessed these properties upon the same basis? A. Yes, sir.

Q. Now, do you know whether or not the tax was paid for 1885, 1886, and 1887? A. I do not of my own knowledge. I have not examined the records to see.

Q. Now, I want to read you an extract here, and see if you think it is correct. This is an extract from the testimony taken in 1889, when I was Chairman of the Committee on Judiciary in the House, page 152. This is Mr. C. E. Wilcoxon's testimony. He was your associate on the Board, was he not? A. Yes, sir.

Q. In making this assessment, when you arrived at these valuations in making the computation, which was a computation to arrive at these assessments, was there ever any valuation placed upon any Federal franchise, or the valuation of any Federal franchise, included in the amounts which were the amounts fixed upon as the valuation of these roads? A. I always understood it, until 1888, that we assessed the franchise.

Q. I ask you as to the Federal franchise? A. I do not know. I don't recollect of the matter being before the Board. Some of the balance of the members may remember it.

Q. (By Mr. Dibble): Your statement is that they always did assess franchises, up to this last year? A. Yes, sir; up to the last year.

Q. Did you assess one or more for each road? A. I don't think they assessed but one.

Q. Was that understood to be the State franchise, or the Federal franchise? A. I could not answer that question.

Q. In the case of the Northern Railway Company, or San Pablo and Tulare Railway Company, and the California Pacific they only had, they only could under any construction, have a franchise from the State, because they had nothing to do with the United States whatever, so that, in those cases, the only franchises they held were State franchises. Isn't that a fact? And those were the only franchises that could be taken into consideration? A. As far as I am concerned, I took the franchise on all the roads.

Q. Is that about the statement that you make now? A. I make this statement: That no member of the Board ever made or ever offered a motion, to my knowledge, that we assess franchises; no member of the Board ever offered a resolution that we include a Federal franchise; no member of the Board, and the Board, at no time ever took official action

or official vote, one way or the other, whether the Federal franchise was included or excluded. Prior to making these assessments, my impression was that the Central Pacific Railroad was a California corporation, existing by virtue of its corporation derived from the State, and that its franchise was a State franchise. But afterwards I was told that it had a Federal franchise also. We assessed a franchise—not two, but one—to each one of these companies. That franchise was not defined as being State or Federal. I supposed we were assessing the corporate right to live and exist, whatever that corporate right might be.

Q. Whatever franchise, then, you assessed, if you did assess any, was simply an element going to show the actual, positive, tangible valuation of the properties of these companies; was that true? A. The Constitution says we shall assess a franchise, and we assessed a franchise. We did not assess—the record shows how it was assessed.

Q. What does it show you assessed the franchise for in 1883? A. It does not show that we assessed it for anything. It shows that we assessed a franchise, a roadway, a roadbed, rails, and rolling stock in the aggregate for so much money. And I don't think it shows two franchises. I think it only shows one.

SENATOR ORR: In other words, I understand you that the record does include a franchise, but the assessment is carried out in one aggregate amount on all the different classes of property? A. That is my memory of the record.

Q. But, by name, it is not a Federal franchise; simply franchises? A. No, not franchises, but franchise.

SENATOR SEAWELL: You did not assess any Kentucky franchise, did you?

MR. CROSS: There wasn't any then, Senator.

Q. Now, you say that you did your very best to ascertain the commercial value of, for instance, the Central Pacific Railroad. In that you included a franchise. Did you make any deduction from that aggregate value on account of any franchise received from the Federal Government? A. No, sir; we never said anything about it one way or the other.

Q. Now, in making up that value, did you include the right of the road to do business, and to collect tolls for carrying passengers and freight, and all other rights and privileges; the rights due from any source? A. Well, I suppose that the franchise—that they derived their right under the franchise to do that.

Q. Well, I am just asking you whether, in fixing this value, you took into consideration all the elements which went to make value to the property? A. My idea of a franchise was the corporate right to live and do business; and therefore I put a valuation on the corporate right to live and do business. That was my idea of a franchise.

Q. Now, see if you cannot frame an answer to the last question that I asked. [Question read by reporter.] As far as you were able to consider it? A. We were, under the Constitution, limited to five, I think it was, and certain definite things. We took those definite things into consideration and said: What are they worth in the aggregate, put together?

Q. Did you take into consideration the earning power of the road at all? A. Yes, sir; of course we did.

Q. If that earning power, then, depended upon the Federal franchise

in any degree, you took that Federal franchise, or the benefits of that Federal franchise, into consideration in fixing the value, did you not? A. That, I suppose, would be a conclusion. We took the earning power into consideration—

Q. It would be the necessary conclusion. A. We took the earning power into consideration in arriving at the rate. That was one of the elements of arriving at the rate—ability to earn money.

Q. Its ability to carry mails and carry supplies of the United States Government, or whatever its earning power was? A. We did not go into separate items of what it might earn, but that it might earn so much in the aggregate; worth so much money, because it can earn so much money.

Q. If its right to earn that much money in any degree depended upon the franchise granted by the Federal Government, then it entered into making up the aggregate value which was placed upon the property, did it not? A. Well, I suppose it would.

MR. JOHN P. DUNN: Mr. Markley, in placing valuation on the franchise, roadway, roadbed, rails, and rolling stock of the Central Pacific and the Southern Pacific for the years 1883 say, and 1884, did you take into consideration any franchise beyond that which you took into consideration in placing a valuation upon the California Pacific, Northern Railway, and San Pablo and Tulare? A. Well, I took into consideration, I think, whatever franchise they had; their right to live and do business, whatever it was. I took that into consideration. I did not know myself just exactly what it was.

Q. During the session of the Board, and prior to the session of the Board in 1883, there was some considerable talk about some testimony that was given in the trial of some cases in the United States Circuit Court, relative to the assessment, by our predecessors, of fences. You recall that, Mr. Markley? A. Do I recall the conversation in the Board, or the testimony?

Q. You recall the conversation about that testimony? A. I was in the Circuit Court of the United States when that testimony was being given, and I said that I thought that the assessment roll itself was the best evidence of its contents, and asked one of the lawyers there why he did not object to the testimony and offer the record; that the written document was the best evidence of what it did assess—the assessment roll itself. We talked in the Board about whether it was necessary to state a negative thing; that it was foolishness to say: we don't assess this; we don't assess that; we don't assess the other; that the roll itself states what we do assess.

Q. But you remember of the conversation among the Board during the session of 1883, in which it was suggested, I think by myself, that we not alone do not assess the fences, but talk about it, and discuss it, so if we should be called upon some time in the future, when this question might possibly come up in the Courts, we would be able to so testify? A. Yes, sir; we discussed that matter, and I believe we did not assess them. My impression is that we sent a circular letter to the County Assessors telling them to assess them.

JOHN P. DUNN: I call the witness' attention to this for the purpose of afterwards showing that for that year the findings show that the Board of Equalization assessed the fences.

THE CHAIRMAN: Mr. Dunn, is that finding a record of the Court?

MR. DUNN: Yes, sir.

THE CHAIRMAN: You expect to disprove it by the recollection of witnesses?

MR. DUNN: Well, we have some official documents.

THE CHAIRMAN: That matter may be considered in argument. It cannot be considered in testimony here.

SENATOR SEAWELL: Now, Mr. Markley, I understand that during the years 1883, 1884, 1885, and 1886, you assessed all of these railway companies—those who had a Federal franchise and State franchise and those who had a State franchise—upon the same basis; that you simply assessed one franchise to each of these companies, and that your assessment of the property compared with other property in the State and, under the rule of valuation as laid down by the Code, was about 75 per cent of its value? A. Of the ordinary commercial value.

MR. CROSS: Now, when you say that you assessed the franchise, you assessed all the franchise that it had that you knew of, did you not? A. We assessed a franchise, and we did not go into any nice point as to what that franchise was. There was never any motion made that we assess a State franchise or Federal franchise, to exclude a State franchise or exclude a Federal franchise; we assessed a franchise.

Q. Whatever franchise it had? A. Yes, we assessed a franchise.

SENATOR SEAWELL: You assessed it about the same way that you would assess the Capital or Golden Eagle Hotel down here, about the way that you would arrive at the value of their property, did you not? A. Yes, sir. The matter of these rights were taken as commercial rights, being used to earn money, and we took their ability to earn money as one of the evidences of value, and we assessed it from that standpoint the best we could get at it.

Q. That is, its capacity to earn money was an element in arriving at its value? A. Yes, sir.

Q. You never assessed any franchise other than that, did you? A. Yes, we assessed a franchise, because the Constitution said we must. The records show it.

Q. I understand that. You put the franchise down, but whatever value you placed upon that franchise was simply an element in ascertaining the actual cash value of the property of these railroad companies; is not that it? A. Yes, sir.

MR. CROSS: And in your judgment, that constituted one of the elements of that value? A. O, yes, sir.

THE CHAIRMAN: I understood you to say in the early part of your testimony that you assessed, as one element of value, whatever franchise gave life or force to the corporation? A. Senator, if you will allow me, I will make myself clear if I can. Before we made any assessment there was some discussion as to what a franchise was. My idea of a franchise was that it was a corporate right to live and do business. That was my idea. And I thought that the Central Pacific Company was a California corporation; had its right to live and do business in the State of California. Whether it had any other franchise or not, I did not know, nor did not think at that time that it had. Afterwards, Mr. Maslin told me he thought it had, but was not quite certain. But we assessed whatever its right was—my idea of a franchise was, its right to live and do business, and we assessed that right to life and do business. That was the idea.

Q. Well, your idea was that, to the extent that the franchise authorized it to do business, to that extent it was assessable? A. Yes, sir.

Q. Another thing I understand you to say that you took into consideration, was the earnings of the road? A. We took into consideration the earning power of the road, to get at the value or rate.

Q. You took into consideration the receipts or earnings of the road to arrive at rate value? A. Yes, sir; that is, I say that; I cannot speak for the whole Board, you know. I say that. Mr. Maslin told me that he thought it had a Federal franchise, and that was one reason why he always wanted us to put a valuation separate on the franchise.

MR. CROSS: Mr. Maslin told that to other members of the Board, did he not? A. I am under the impression he did.

Q. And after that fact was developed, the assessment of the road was raised, was it not? A. It may have been raised. I do not think it was ever raised on that account. I am quite certain it was not raised on that account.

SENATOR SEAWELL: Do you think you assessed the property at its actual cash value under the Code of this State, as modified, as you say, by a disposition to assess property about 25 per cent below the value—

MR. CROSS: Commercial value?

SENATOR SEAWELL (continuing): — because other property had been so assessed in the State? A. Yes, sir. We had been through the State of California and investigated the assessment of other property, and we thought we had made a very thorough investigation, and finally we arrived at the conclusion at about what other property was assessed at, and we made the best effort we could to get this equal with it.

Q. Do you think that in that Board there was any feeling or disposition to assess the railroad company at an exorbitant rate from prejudice or bias, or ill-feeling against such corporation? A. I have no ill-feeling myself.

Q. Do you think there was any in that Board? A. I have none at all myself. I have always felt very kindly toward the railroad company, and I would like to see more railroads; and I myself, have no ill-feeling towards the railroad company, and I do not wish to do them an injustice in any shape or form.

Q. Nor that never influenced you? A. No, sir.

Q. Do you think it ever influenced anybody else on that Board? A. I have nothing positive to show, and cannot tell what influenced other men. I have nothing to show that it influenced them.

Q. It would only be a matter of opinion? A. Yes, sir.

L. C. MOREHOUSE.

Sworn.

Mr. Cross stated that the examination of Mr. Morehouse would probably take some little time, and as it was nearly five o'clock, the committee adjourned until to-morrow, Saturday, January 28, 1893, at 1 o'clock P. M.

SATURDAY, January 28, 1893—1 P. M.

The Chairman and four other members of the committee met in the room of the Committee on Corporations, and waited until two o'clock for a quorum. No other members having appeared at that time, the Chair announced that an adjournment would be taken until Monday, January 30, 1893, at 3 P. M.

MONDAY, January 30—3 P. M.

L. C. MOREHOUSE.

Recalled.

MR. CROSS: Mr. Morehouse, what official position, if any, do you hold under the government of the State of California? A. I am a member of the State Board of Equalization.

Q. How long have you been a member of the State Board of Equalization of the State of California? A. Since January, 1883.

Q. You came in with the administration which came in on the first Monday of January, 1883? A. Yes, sir.

Q. How regular has been your attendance upon the meetings of that Board since that time? A. I have been very regular; attended, I believe, all the meetings where there was work to be done or business to be transacted.

Q. You have attended all the meetings where business was transacted by the Board? A. Yes; I believe I never missed a vote on any question of importance.

Q. Now, under the new Constitution, and up to the time you came on the Board, and after you came on the Board, did you devote any attention to the method in which assessments of railroad property had been made, up to the time you came on the Board? A. To a certain extent, necessarily. I was Assessor in Alameda County prior to the adoption of the new Constitution, and assessed railroad property myself, as the local Township Assessor.

Q. What was the method pursued by the State of California in assessing railroad properties up to the time you came on the Board with regard to segregating the items of assessment, or assessing them in gross? A. What I know about that is from consulting the old records.

Q. State it generally. A. They divided it up; they put separate values upon the different items—a separate valuation upon the different items, making it different each year.

Q. When you say they put a separate value upon the separate items, do you mean every item named in the Constitution as an item of railroad assessment? A. Yes, sir.

Q. What was that? A. Franchise, roadway, roadbed, rails, and rolling stock.

Q. Up to the time you became a member of the Board, each of those items had a separate value attached to it for each year? A. Yes, sir; for some of the years; whether always that way or not, I couldn't say.

Q. When you came into the Board, what question, if any, arose with regard to the proper method of assessing railroad properties in that regard? A. A question arose as to the punctuation or pointing off of those five different articles first. It was a question in the mind of some of the members, and our Secretary, whether or not they should not be separately assessed.

Q. That is, separately valued? A. Yes, sir; and in that investigation we came across franchise; we had a good deal of discussion about it, but our way was to get a separate valuation on these things, because some were claimed to be illegal—to be illegally assessed and were not taxable. We had a great deal of trouble about it, and a great deal of talk about it.

Q. In the Board? A. Yes, in the Board and out.

Q. What particular discussion was there with regard to the assessment of the railroad's franchise? A. Our clerk, E. W. Maslin, on whom we relied for a good deal of our legal information up to a certain time, stated to us that the contention of the railroad people that the Federal franchise was not an assessable element, he was afraid of. We discussed it repeatedly, in every shape and form.

Q. He was a man who had had experience as an attorney, was he not? A. Yes, he had been a lawyer, and he hunted up authorities and brought them into our office and read them, in regard to the assessment of a Government or Federal franchise. He stated to us clearly, that if the railroad made that point they would be likely to win their suit, and it would be better for us to assess the franchise, which we were compelled to do under the new Constitution—if we were compelled to use that word, that we should put a separate value on it.

Q. So that if there should be anything wrong about the assessment, that particular value could be weeded out? A. That it would not invalidate the assessment upon the other four elements or articles named.

Q. Do you remember the particular line of authorities that was discussed in the Board, presented by Mr. Maslin, upon that subject? A. These discussions were not always carried on in open Board, but with members of the Board in the Board room.

Q. With the view to making a proper assessment? A. Yes, sir. I don't think there was a member of the Board who was not anxious to get an assessment, so far as the assessment was concerned, that would be legal, so the railroads would be compelled to pay their taxes; that seemed to be the disposition of every member of the Board. Mr. Maslin went to the State Library, I think, and brought in the decision of Chief Justice Marshall, and read it more than once, in regard to the assessment of a Federal franchise.

Q. And they discussed that question? A. They discussed that question, and at one time—I know of one particular time—I heard it so much I could repeat it.

THE CHAIRMAN: McCullough vs. the State of Maryland? A. Yes, sir.

MR. CROSS: State what discussion was had with regard to that particular case? A. Mr. Maslin said he believed that was good law; that the decision would carry; that there had been a holding by Judge Field early in 1883 in regard to something of that kind, and that led him to believe the thing would be decided in the same way again.

Q. That is, that Federal franchise was not subject to taxation by the State? A. Yes, the authorities stated if that was the case they could be taxed out of the State—that is, taxed out of existence, more properly speaking.

Q. What course was pursued by the Board with reference to the matter, in order that they might act advisedly and make a correct assessment? A. Some members of the Board were in doubt—the proposition among the members in consultation with our Secretary, who for the purpose of arriving at the manner of assessing, was as much a member of the Board as any member—was one of them—was that we should place a separate value upon those articles, upon the things mentioned in the Constitution. That was his opinion, and we came to that conclusion—the majority of the Board did. Some of them objected to that and thought we had better get counsel to further look into it.

Q. What steps did the Board take to get what they considered reliable advice upon that matter? A. One of the members, Mr. Dunn, consulted the Attorney-General—in fact we all consulted the Attorney-General; I remember of having a talk with him myself. I remember on one occasion—to go back a little—that the Attorney-General came into the office—not when the Board was in session, but he came in for consultation, and we talked the matter over for all of two hours.

Q. In the presence of members of the Board? A. Yes; we listened attentively to the discussion. They brought up all the decisions, and it was talked over fully. I suppose Mr. Marshall then agreed with Mr. Maslin, from his conversation, but later Mr. Maslin was instructed, I believe, or at least we concluded among ourselves, that we would consult the Attorney-General and associate counsel.

Q. Counsel associated with the Attorney-General in the State railroad tax cases? A. Yes; they were endeavoring to collect the railroad taxes—seemed to be trying to do that, and it seemed to be their universal opinion that we ought to group those things together, including the franchise; that that would be the better way—the safer way.

Q. What steps did the Board take to get that opinion down in black and white, so to speak? A. There was a great deal of discussion about the matter, and Dunn thought it was best to assess it in that way. I remember distinctly that I, for one, objected, according to my judgment, and the judgment of our Secretary, without we had some written evidence of that.

Q. To get the opinion of the lawyers of the State? A. Yes; something we could fall back on in case it turned out as we believed it would, that the franchise should be separately assessed.

Q. Were you in the committee-room a few days ago when evidence was taken in regard to the opinion furnished by Messrs. Delmas, Terry, Rhodes, Baggett, Waymire, Lesser, and Marshall, the Attorney-General? A. I was.

Q. State whatever you have not stated that will enable the committee to understand how that opinion happened to be given? A. For the reason that the members—the four members of the Board—

Q. Other than Mr. Dunn? A. Other than Mr. Dunn, yes, sir—as I remember it now, all rather objected to it, and didn't believe it the proper thing to do; thought we ought to pursue a different course, and before we proceeded to do that we requested that Mr. Dunn proceed to San Francisco. There was a list of questions made out—and get their opinion in writing, and get their signatures, so we would have something to rely upon.

Q. Was that opinion that was offered in evidence here the other day, presented to the Board before it made its assessment in 1883, of railroad properties? A. Yes, sir.

Q. State whether or not that was the opinion upon which they acted? A. Yes, sir.

Q. In the records of the State Board of Equalization, proceedings of August 18, 1883, I find the following record, to which I call your attention: "Whereupon Mr. Dunn moved the following: 'Resolved, that this Board, when it assess each railroad company, shall assess the franchise, roadway, roadbed, rails, and rolling stock of each company as a whole, and for one sum, and not separately.' Mr. Gildea seconded the motion. He stated that his vote would be based entirely upon the

opinion of the Attorney-General, although it did not meet his entire approval. And in this Messrs. Markley, Morehouse, and Wilcoxon concurred." Is the opinion therein referred to, this written opinion that was given in evidence before the committee the other day? A. Yes, that is the way I understand it; those are the facts. That is the way we all felt about it.

Q. That is, you thought what—why did you make these protests against assessing in that way? A. We made protests because it was against our judgment, from what we had heard, but we did not wish to set it up against that array of big talent; we didn't think we were justified in doing it.

Q. You felt as though by such advice, furnished by attorneys selected by the proper officers, you had a right to be bound? A. Yes, sir.

Q. What discussion was there at the meetings in connection with these matters in 1883, concerning the Federal franchise being included in the assessment, or not being? A. That is the element we were afraid of. There was no discussion about the county—about the franchise particularly in the county—there was no necessity for that, because the railroad people hadn't put in the plea that they were not assessable, but they had claimed that the Federal franchise could not be taxed.

Q. By the State? A. By the State; yes, sir.

Q. That was the trouble, was it? A. That was the trouble; and we got more of the information—at least, before we got down to business and got to work—from our Secretary than any other source, because he kept pace with those things as we went along.

Q. He looked up and presented authorities to the Board? A. Yes, sir.

Q. In making up the assessments and putting on the valuations that were put on, what franchise was included in the assessment? First, how did you happen to use the word franchise in the assessment? A. We couldn't avoid it. The language of the statutes and the law said that the word franchise had to be used in order to make a legal assessment.

Q. Now then, what about the Federal franchise in that assessment? A. We never discussed leaving it out, except that we discussed the proposition of putting a value on it separately—separate and distinct from the others.

Q. What for? A. For fear it was not assessable; believing in our own minds it was not assessable—was not a taxable element. That was the discussion.

MR. SEAWELL: You said the Federal franchise was not assessed? A. No, sir; I did not. We were so instructed, and came to that conclusion after discussing it. That was the one element we were afraid of.

Q. You were afraid that the assessment of that would vitiate the whole assessment? A. If it was grouped together.

Q. If it was made in one gross sum? A. Being unassessable, we could not get at it.

Q. What franchise was included in this assessment of 1883? A. All the rights they had, all the franchises.

Q. Were you present when Mr. Delmas gave to the Board a basis or theory for assessing the property as to fixing the value? A. Yes, sir; there was a good deal of discussion about that. While some members of the Board—in fact, there were a great many ways of figuring it. The

road was figured by different members in almost every conceivable way to arrive at its value. Some figured in one way and some in another. Some of the members believed in taking the selling value of the stock and the indebtedness and deducting the tangible property assessed by local Assessors and arriving at the value of the road in that way.

Q. That is, to take the market value of the stock and add that to the indebtedness? A. Yes; and subtract the assessment on the property made by outside Assessors that was not covered by our assessment.

Q. Leaving the rest as the value to be assessed by the State Board of Equalization? A. Yes; if I understand it correctly.

Q. What was Mr. Delmas' advice to the Board in that respect? A. Mr. Delmas came in one—

MR. SEAWELL: What is the object of that—what his advice was?

MR. CROSS: I suppose, Mr. Chairman, that Senator Seawell is acquainted with the fact that Mr. Delmas was at the time the attorney selected by the Controller and by the Governor to advise upon these matters; they had lost confidence in Marshall, for some reason, and in his advice, and this advice was furnished to the Board. The purpose of it is to show that the Board was acting, in part at least, as we propose to show, by the advice of Mr. Delmas. We want to show, if it is considered proper by the committee, that when these assessments which have been made, the taxes on which have not been paid, were made, there was an element included which was not legally assessable.

THE CHAIRMAN: The question is, what ingredients entered into the assessment, and for the purpose of laying the foundation for that, this question may be answered, but I think you have gone into it far enough. It does not matter so particularly who gave the advice as it does as to what the Board did. Did the Board consider the Federal franchise in making this assessment, as an element of value of the property of the road?

MR. CROSS: I will put the question to you in that way. Did the State Board of Equalization, in assessing the value of these roads, in the term franchise, include the Federal franchise? A. Yes, sir.

Q. You said there were some members of the Board who made the basis of assessment the market value of the stock and the amount of the indebtedness added together, less the amount assessed against the property of the company by local Assessors. What members of the Board advocated that method? A. Mr. Dunn. Mr. Dunn, if I remember correctly, came to the door of the office with Mr. Delmas, with one or two books under his arm, after Ryan, who presented the case for the railroad, had been wrestling with us I don't know how long—he had left and gone. Then Mr. Dunn said Mr. Delmas wished to talk to us. I don't know whether he said he wished him to, but I suppose he did. I remember, distinctly remember, he said he wished to talk to us; probably he used the words "instruct us," or "enlighten us," upon the manner of assessing railroad property, but you will find it entered upon the minutes of that meeting.

Q. That is the fact—of Mr. Delmas so appearing? A. Yes, sir; and that fact is in the minutes.

Q. He addressed the committee upon that subject? A. Yes; and as I remember it, that was one of his theories—one of his ways of arriving at the value. We called it the Illinois method.

Q. At that meeting in 1883, the members of the Board appear to have

been Mr. Dunn, Mr. Markley, Mr. Morehouse, Mr. Gildea, and Mr. Wilcoxson? A. Yes, sir.

Q. Did they continue to be members of the Board up to the year 1888? A. No, sir.

Q. What change was made? A. Mr. Gildea was dropped out and Mr. Markley, and in their places were Gordon E. Sloss and John T. Gaffey.

THE CHAIRMAN: When did they come in? A. In 1886, leaving three of the old members upon the Board.

Q. That would be January, 1886? A. No, January, 1887, I guess.

Q. Yes, four years; that is right. A. Yes, sir; four years would be 1887.

Q. Now, what change was made in the assessment at any time, of railroad properties, during the years 1883, 1884, 1885, and 1886? A. We talked ourselves pretty nearly out in the year 1883. We had discussed that matter fully, as far as the old members of the Board were concerned, and it was scarcely necessary to discuss it any more. We followed the advice up to and including the year 1887. It was discussed perhaps by some members occasionally, but it was scarcely necessary in 1887. It would be hardly reasonable to suppose that Mr. Dunn, Mr. Wilcoxson, and myself would discuss that very much, for we went over it very warmly in 1883.

Q. And simply settled it for the time being? A. Yes, sir.

Q. State whether the Federal franchise was included in the assessment of these railroads which had a Federal franchise, by the State Board of Equalization in 1883, and subsequent years, up to 1888, but not including 1888? A. Yes, sir; and as I understand it we discussed it thoroughly. That was the point we were making—that was the point we were afraid of—the Federal franchise. I deemed that if the franchise of the road and all of its rights had been received from forty different sources, we would have been compelled to call it a franchise under the law; it is a franchise.

MR. CROSS: I submit the witness for further interrogation by members of the committee, or other parties.

SENATOR SEAWELL: You testified before this committee in 1889, did you not? A. Yes, sir.

Q. That is, the Assembly Committee, of which I was Chairman? A. Yes, sir.

Q. You also testified, I believe, recently, in Court, as to this same matter; did you not? A. Yes, sir; I did.

Q. Now, what do you mean by saying that you assessed the Federal franchise? Do you mean you assessed the road for what you considered it to be worth? A. Yes, somewhere in that neighborhood. There might be a question about what it was worth.

Q. Is there anything in the proceedings of your Board to indicate what you assessed the franchise separately at? A. No, sir.

Q. No record at all? A. No, sir; we were instructed not to do that.

Q. You were instructed not to do that? A. Yes, sir; that was just the trouble. That is what I wanted put in.

Q. You wanted to put it at a separate valuation? A. Yes, sir.

Q. In 1885, 1886, and 1887? A. 1884, 1885, 1886, and 1887.

Q. In 1889, before the House Judiciary Committee, a question was asked you, to which you made the following reply:— A. What was the question?

Q. This is the question: "Didn't the Board deduct, then, in its computation, the value of these steamers?" You were principally questioned at that session as to the value of certain steamers run by the road. You answered it in this way: "That would be a very hard question to answer. Mr. Dunn might figure in one way, and I might figure in another." A. As a fact the steamers did enter into our estimate of the value of the road—the use of the steamers.

Q. You say: "When we got done with the figuring, we generally valued the road at what we considered it worth." A. Yes, sir; the use of that element right along.

Q. "I guess you can't mention any proposition that we didn't figure upon." A. Yes, sir.

Q. "I wish to state that you could not trim us down to any particular line of figuring to arrive at a value. I say that for myself and for the entire Board." Now, under the Constitution of this State, which requires that property shall be assessed at its actual cash value, do you mean to say you assessed that road for an amount in excess of its actual cash value?

MR. CROSS: The Senator is evidently reading the wrong question. I think you made a mistake in the question.

MR. SEAWELL: In proportion to its value—do you mean to say you assessed it in excess of its actual cash value? A. The railroads?

Q. Yes. A. It would be a hard matter for me to answer that unless you would pick out the road and year.

Q. You say in your testimony of 1889 that you figured in every way in order to determine its value, and assessed it at a certain amount. Do you think you assessed that road in an amount in excess of its actual cash value? A. Sometimes, yes; in some of them; they were not my assessments—the assessments of the Board were not always my judgment; they were the judgment of three out of five of the Board; not necessarily mine.

Q. Did you support the proposition to make the assessments of 1885, 1886, and 1887 at the amounts at which they were made? A. I think not, sir. Sometimes, yes; oftener, perhaps, no.

Q. For those years? Take the Southern Pacific, for instance, or the Central Pacific, or any one of those roads. A. You will have to consult the record. I couldn't remember—couldn't pick out any one year.

Q. Among the people it is generally thought that you are authority upon tax questions, and that you had a great deal to do with assessing these roads at these amounts yourself. I know you have always occupied a prominent position in the Board, and now I want to know of you whether or not you think this road was assessed at over 75 per cent of its actual cash value. A. If you will pick out the year.

Q. I mean, taking away the franchise, taking the value of the property as it stood—do you think that during any one of those years this road was assessed for 75 per cent of its actual cash value? A. What year do you have reference to?

Q. 1885, 1886, and 1887. A. We never took away the franchise.

Q. You didn't deduct the franchise? A. We didn't deduct the franchise; no, sir.

Q. Didn't you exclude that franchise— A. In 1888.

Q. After a certain decision, in order that it might appear upon the face of your record that it was excluded? A. Yes, sir.

Q. That didn't affect the valuation, did it? A. I think so. I think if you will turn to the record you will see it did.

Q. I think you said you assessed more reasonably afterwards. Wasn't that done under this misapprehension, that the railroad provisions of the Constitution might be declared in conflict with the Constitution and laws of the United States, and you didn't want the railroad to resist any tax you would impose? A. No, sir. You will find in 1888, the Central Pacific is assessed for three millions less than in 1887; you will find that the Southern Pacific is \$2,500,000 less.

Q. But after the immense litigation growing out of this question, and numerous adverse decisions, were you not at that time willing to assess the railroads at anything they would say for you to assess them at? A. No, sir; never had any such feeling at all.

Q. Do you know whether or not the railroads have conceded that you had authority to assess them in any manner whatever, as a Board of Equalization? A. If there was anything they could think of that they objected to, I guess they put it in. They objected to everything, I believe, nearly, that I remember of.

Q. They objected to everything? A. Yes, sir.

Q. You didn't claim everything, did you? A. No, sir. I would like to say in explanation of my evidence, if you will allow me—

THE CHAIRMAN: You have a right to do so.

A. I don't want to be uncivil to the Senator—

SENATOR SEAWELL: I have a right to ask the question? A. Yes, I would like to explain this. If you will take the records, which I would have to do in order to fully explain to you my position in regard to the assessments of railroad property, and I don't think there is a member of the Board who won't bear out my assertion, I never did vote for as high a value on railroad property as many other men, but I did it as conscientiously as any other man. I think the records will show it. In the assessment of railroad property for a great many years, possibly every one may not have been my exact estimate of how it ought to have been placed. There are cases where I voted for the sums that are put upon the book. If I had had the controlling vote it would have been, perhaps, just the same—just that sum.

Q. Have you any memorandum, or data, or figures—private memorandum to indicate the elements that entered into this computation during these years? A. I don't think I have now. When I was reelected and took my desk a second time I burned up four bushels of them.

Q. And since then I suppose you have destroyed them? A. Since then I have not done a great deal of that kind of thing. It has been a source of amusement to me to see the new members do that business.

MR. CROSS: Does that include Mr. Hellman? A. I have no exception to make; I include them all. I would say, Senator, in answer to that question, so it may not appear trifling, I believe a new member coming upon the Board, in order to enlighten himself, has to go through a certain amount of work.

Q. You were present a few days ago when Mr. Markley testified; you heard his testimony, did you not? A. Yes, sir.

Q. He testified that it was his opinion that the railroad was not assessed over 75 per cent of its value—its cash, actual cash value. Do you agree with him in that? A. I do not.

Q. Now take the year 1885; do you think the assessment for that year was excessive? A. In 1885—upon what road.

Q. Upon railroad property. Say upon the Central Pacific and the Southern Pacific? A. As compared with the assessment of other property. Just give me the figures for the year you ask for.

Q. The assessment of the Central Pacific was \$22,000,000? A. Give me the number of miles.

Q. Six hundred and two miles, I think. A. If I am any judge of the value of railroad property, Senator. I believe \$22,000,000 was out of proportion to all the other property in the State, the way it was assessed.

Q. You think it was? A. I thought so then. I stated it then before the Board; Mr. Dunn will bear me out in it. I always contended so.

Q. Take the Southern Pacific—\$17,000,000. Mr. Markley testified it was not in proportion with other properties assessed in the State for that year? A. I think it was full high. I would like to explain that, if you wish it.

THE CHAIRMAN: It is for you to say whether you wish to make any explanation of your testimony. A. I do. I want to state this, that the property assessed by the State Board of Equalization is a certain thing; none of it, as I understand, can escape assessment or escape our Board; we get the exact number of miles—I believe it is not disputed that we get every inch of the road; we get every car, we get all of the property we assess for the railroads; there is none of it escapes taxation as far as the county is concerned. Now the other property of the State does not go on the roll that closely; you don't get it on the roll.

Q. Take the mortgages assessed in the State; those are assessed at their full value, are they not? A. No, sir.

Q. Mortgages? A. No, sir.

Q. You don't assess the accumulated interest, but isn't that the only difference? A. No, sir, many of them are assessed below their face. There is a Senator sitting up stairs now, who has mortgages that were assessed originally by the Assessor at 60 per cent of their face value and increased by the Board of Supervisors to their face. It occurs in almost every county in the State.

Q. That is not so in my county. A. I beg your pardon. Where property is assessed so low they are compelled to reduce the mortgage to make it.

Q. That is exceptional; where the security is good you assess a mortgage at its full value? A. In a great many cases.

Q. In 1886, the Central Pacific was assessed at \$20,000,000, and the Southern Pacific assessed again at \$17,000,000; do you consider \$20,000,000 an excessive assessment for that year for this road? A. I can't say I do, especially. I believe, for the reasons I am giving you, that we do get all of the property, probably all of it, so that if we assess it as close up to its true value, as you find property that goes upon the roll through the Assessors of the several counties of the State, and add to that the amount of property that escapes assessment entirely, you will find it was very closely assessed.

Q. In 1885 you were on the Board; did you vote to assess the Central Pacific at \$22,000,000 or not? A. I think not, but the record would be the best evidence of that. I don't remember, but I think not. I think you will find, if I did, that there was a proposition to assess it at \$25,000,000, or to assess it higher.

Q. Did you vote to assess the Southern Pacific at \$17,000,000 in that year? A. I couldn't tell you.

Q. In 1886 did you vote to assess the Central Pacific at \$20,000,000? A. The record will show.

Q. Do you remember whether or not you did? A. I do not.

Q. Do you remember whether or not you voted to assess the Southern Pacific at \$17,000,000 during that year? A. I do not.

Q. In 1887 the Central Pacific was assessed at \$18,000,000. Do you consider that excessive? A. I don't know that it was; no, sir.

Q. Do you think that property was assessed, at that figure, in proportion to other properties in the State? A. I considered at the time it was well assessed in proportion to other property; yes, sir. I think it has been all the time well assessed, but sometimes, I think, better assessed. That has been my opinion, and I have expressed it freely always.

Q. The Board assessed the Southern Pacific \$15,500,000 that year? A. Yes, sir.

Q. You said you assessed the Federal franchise. Where do you say you assessed the Federal franchise; it does not appear as a Federal franchise on your minutes, does it? A. No, sir, not on the minutes; nor as a State franchise, either.

Q. It is there as a franchise? A. Yes, sir.

Q. Then, why do you say it is a Federal franchise? A. Because we knew the Central Pacific and the Southern Pacific held a Federal franchise, and we discussed it. That was the element, as I said before, we were afraid would be declared not assessable, unassessable.

Q. Did you yield to the advice of these attorneys spoken of—Delmas and others—in assessing this road, or did you adhere to your own convictions as to whether or not it was a lawful assessment or not, to assess that franchise? A. As to the form, I adhered to them.

Q. As to the form? A. Yes, sir.

Q. You did not put it on your books as a Federal franchise? A. No, sir.

Q. Did they have any other franchise except a Federal franchise? A. Yes, sir; I believe they did. The Constitution fixes the language in which we must assess railroads—or the law.

Q. What franchise did the Central Pacific have at that time? A. As I understand it, it had one franchise under the General Government and one from the State of California.

Q. It then had a franchise from this State? A. Yes, sir.

Q. Was not the express object in putting in the word "franchise" there to show that the Federal franchise was not assessed, because you didn't assess that distinctively, did you? A. Who, our Board or the framers of the Constitution?

Q. You put it on your minutes "franchise," etc. A. Because the Constitution compelled us to do it.

Q. Well, I know the Constitution compels you to assess a franchise, but don't compel you to assess a Federal franchise, and you didn't put that on your books as a Federal franchise? A. Very true; it was not necessary; it was not any more necessary than it was to say that we didn't.

Q. Don't you think, as a matter of fact, if this road had had no Federal franchise at that time, your assessment would have been

exactly what it was? A. Mine would not; I believed it had a value, and I think so yet.

Q. I have no doubt but what it has a value—— A. I believe it adds a value to the property.

Q. Taking the Board and the discussions that were had, what was said and the men that were present, don't you think, as a matter of fact, that if the Central Pacific had had no Federal franchise then, that your assessment would have read just exactly as it reads to-day, and would have been at that amount for that year? A. I can't say as to that; I presume I didn't vote for that amount; there might have been men there who would have voted for that amount that year.

Q. Would it have influenced you? A. Taking the Federal franchise out?

Q. Taking out the franchise, whether State or Federal—say it had a State franchise—would that have reduced that assessment, the value of those properties, in your belief? A. Yes, sir; the record reads in 1888 about five millions and a half less on the two roads.

Q. I understand there might have been a shrinkage from some cause; there might be some reason for assessing a piece of property this year at a certain sum, but that is no indication that it be assessed at the same sum next year. There is a great deal of property that was assessed eighteen years ago at double what it would be to-day, and some assessed now at double what it was then.

THE CHAIRMAN: I understand the witness to say it did affect him in his estimate of the value of the property.

SENATOR SEAWELL: How many members of the Board are there? A. Five—six; the Controller is, ex officio, a member.

SENATOR SEAWELL: That is all.

THE CHAIRMAN: Does any other member of the committee wish to interrogate the witness?

MR. DUNN: I would like to ask a few questions.

Q. Mr. Morehouse, the Board of Equalization, in 1883, assessed the Central Pacific, \$18,000,000; in 1884, for \$24,000,000; in 1885, \$22,000,000; in 1886, for \$20,000,000; in 1887, for \$18,000,000; in 1888, for \$15,000,000. When the Board placed the valuation of \$15,000,000 upon the Central Pacific for 1888, was there any motion or declaration of the State Board of Equalization that the reduction of \$3,000,000 was made because they did not include the Federal franchise in the assessment? A. The record would be the best evidence of that.

Q. I am speaking of your knowledge. Was there any such declaration? A. No such declaration is on the books.

Q. They have gone behind the record here; the other side have gone behind the record. Outside of the record, as far as your memory goes, was any declaration made by members of the Board, one to the other? A. I can't say positively, but it was an element of value in my mind. It was talked over. I talked with different people about it; but whether—I know there was no motion made to that effect, never was, but we did discuss the proposition in 1888 as to leaving it out.

Q. Why I called your attention to the assessments made in previous years was to show you that reductions were made, considerable, in view of the fact that you seemed to be of the opinion that the Federal franchise was included. I simply call your attention to the fact that between the years 1885 and 1887, there was a reduction of four millions in the

assessment of the Central Pacific. Now, I want to know whether there was, at the meeting of the Board in 1888, a declaration or motion or general talk that they would reduce the assessment of the Central Pacific, because they didn't intend to assess the Federal franchise that year? A. I don't remember any such declaration specifically, no more than there was that we included the Federal franchise, because it was not necessary. That was a thing that was discussed repeatedly, and so well understood by the Board, that we were trying to evade the Federal franchise in 1883, and finally when it came to 1888, some of us said "we told you so," and we changed it.

Q. In this opinion you have had called to your attention the opinion of Delmas, Terry, Judge Rhodes, I believe the Attorney-General, Marshall, Mr. Baggett, Waymire, and Lesser. Was there anything in that opinion that advised the State Board of Equalization that they had a right to assess the Federal franchise? A. No, sir.

Q. Was there any motion or declaration made by any member of the Board during any of those meetings, that they should include, in the valuation of the franchise, the value of the Federal franchise? A. No sir, because we considered that "franchise" covered all of the franchise that was given the corporation, and I still think so; it was their right.

Q. You say "we considered"—— A. I mean the Board, the majority of the Board.

Q. "We considered" we were assessing the Federal franchise? A. Yes, sir.

Q. And when you so considered, it was not so declared by motion, or anything else?

THE CHAIRMAN: The witness has stated two or three times that it was not. You cannot ask him two or three times over, the same thing; he has said there was no such motion, no such record on the minutes, and he said it more than once.

MR. DUNN: I didn't know he had so stated.

THE CHAIRMAN: He has stated it again and again—that there was no such motion on the minutes; it was the understanding, but no motion.

MR. DUNN: Did the Attorney-General, at the meeting when you say he was present, or Mr. Delmas at the meeting when he was present, advise you it was your duty to assess the Federal franchise, as far as you remember it? A. In that language I will not swear to it, but I will swear that no member of the Board but what understood what we were trying to dodge. It was a well known fact; the whole of them knew it. Mr. Ryan repeatedly told us—as he termed them "our people"—he says, "you can't assess our Federal franchise." That was thoroughly discussed, and when we called it a franchise it included everything; it was their rights, all of them. We called it a franchise, because when we put it on the books, we had to put those five things on there; that was all there was to it.

Q. In assessing the franchise of the Central Pacific and Southern Pacific roads, to distinguish between them and the Northern, San Pablo, etc.? A. I can not answer for you.

Q. I am asking if we did, if there was any record or motion on the books? A. Motions of the Board would not show it, for the same reason

that I answered before, that we would have no right to go outside and include anything that was not laid down in the Constitution.

Q. The Constitution required us to assess the franchises, the roadway, roadbed, rails, and rolling stock.

MR. CROSS: Not franchises, the franchise. There is no such thing as franchises for one corporation. The law books define that thoroughly—that the franchise of a corporation is their right, every right that corporation has that is not tangible property. Franchise is a word that includes everything.

THE CHAIRMAN: That is a question of law, not evidence.

MR. DUNN: We didn't declare that we assessed the franchises, we simply declared the same as in the Northern, the San Pablo, and all of the smaller roads, that we assessed the franchise, the roadway, the roadbed, rails, and rolling stock. A. That was the language entered upon the books.

Q. Can you account for the reduction in the previous years—for such a large reduction as was made between 1887 and 1888? A. I account for that as a change of opinion of some members of the Board.

Q. Isn't it possible they changed the value of 1887 and 1888, without any regard to the Federal franchise? A. Very likely they may have done so.

SENATOR SEAWELL: I asked that question, whether or not any variation existed as to the values put upon these roads that had a Federal franchise, and the San Pablo, and Northern, etc., which only had a State franchise? A. I don't exactly understand that question.

Q. There were certain roads you assessed that had a State franchise? A. Yes, sir.

Q. You assessed the franchise; that was the first element. For instance, take the San Pablo and Tulare, that had only a State franchise? A. We assessed all the rights that road had; we did the same with the others.

Q. So far as the assessment value that you placed upon it, it only went to the limits of the State; you valued the road worth so much within this State; that is, their right to do business within this State? A. There is a question about that.

Q. How so? A. There is a question whether you can eliminate, or whether any man did eliminate—it is a question that would be hardly worth while discussing, because I know we did know—the Board knew, I knew, and I presume they all did—that it did connect at Ogden; not on the State line, but at Ogden.

Q. In valuing the franchise you simply valued the right to transact business in this State, and took into consideration all of the rights that that road possessed, outside of its tangible property, to transact business in the State of California; wasn't that it? A. Everything that had an element of value.

Q. Within the State of California? A. I want to answer a little further? You asked about other roads. There is the California Pacific, assessed at \$22,000 per mile, way ahead of the Central Pacific, notwithstanding it didn't have a Government franchise; but there were other elements that entered into that calculation; there were other reasons for assessing it a good deal higher.

THE CHAIRMAN: Do I understand you to say that in 1883, 1884, 1885, 1886, and 1887 you, as a member of the Board of Equalization, took

into consideration the Federal franchise as an element of value in your estimation of the Central Pacific and Southern Pacific roads? A. I do. I say we discussed it freely and thoroughly, and that we never attempted to exclude it until 1888. Then we deliberately left it out, or tried to, if we didn't. We did what we could to do it. It was so well discussed in former years that perhaps in the years 1887 or 1886 and 1887 there was very little said about it, because there were three members of the old Board there.

Q. But the same thing occurred in all those years? A. It would be impossible, after the discussion we had, to say we didn't include the Federal franchise; that was the thing I was afraid of. It came up in a great many counties in this State, and was discussed by the District Attorneys; they asked, "How about the railroad taxes? Why don't the railroad pay their taxes?" The matter had drifted into this Government franchise, or Federal franchise, and we talked about it and discussed it at length.

Q. In fact, you did include the Federal franchise, and from your conversation with other members of the Board, they did too? A. That is what we were afraid of.

Q. Answer my question. The other members of the Board did too? A. Yes, sir; as I understand it. Technically a man can say the Federal franchise was not assessed, but actually it was.

MR. CROSS: Mr. Dunn has stated here, during the progress of this investigation, that what other witnesses have testified to in some respects, he don't remember. Was Mr. Dunn as regular in his attendance upon the meetings of the Board as the other members? A. No, sir; the duties of the Controller's office kept him busy, and he used to come up there and vote, and go away. He frequently came up and brought some of his knitting with him; he brought along a handful of claims, especially when the Legislature was in session, and he had a great many to sign. He did have a great deal of that kind of work to do and he was not as regular in his attendance before the Board as others were; he had other duties to attend to. I don't mean to imply that he neglected his duties.

MR. DUNN: Was I not present at all the meetings during the times the vote was taken? A. Yes, but you would take your hat and go out, and the rest of us would have a discussion. We used to have a great deal of discussion, and there was a great deal of work, too. We tried to act sometimes for a week before we did it; we would try a long while sometimes before we arrived at a conclusion.

MR. CROSS: In this record it appears that the franchise of some roads in previous years, would be assessed one dollar, and the Southern Pacific would be assessed thousands of dollars, per mile. Were those records consulted in making the assessments in 1887 and 1888? A. I knew of those records.

Q. In making up the basis of value was the franchise of a road having a Government franchise placed at a higher price, as an element of value, than if the roads didn't have a franchise from the National Government? A. I am speaking of the records now; it looks that way in the book.

Q. You testified as to the manner in which Mr. Dunn and Mr. Delmas advised assessing, and that was to take the market value of the shares of stock and the indebtedness—

THE CHAIRMAN: Is it worth while to go back over that again? It was not done. The question before this committee is not what people wanted to do, but what they did do.

Mr. Cross: Very well, I will not press the matter.

E. W. MASLIN.

Sworn.

Mr. Cross: Where do you reside, Mr. Maslin? A. Well, I suppose I reside in Placer County; I vote there, but I make my living in San Francisco.

Q. Did you ever hold any official position related to the State Board of Equalization of this State? A. I did.

Q. During what years; beginning when and ending when? A. From 1880 until April, 1891.

Q. What position did you hold? A. Clerk of the State Board of Equalization.

Q. Were you present at their meetings during that time? A. Every one.

Q. Did you keep the records of those meetings? A. I did.

Q. Will you please show me the first record of any meeting of the State Board of Equalization at which railroad properties were assessed? I will ask you first of a meeting that was held in August, 1883, where a motion was put that "whenever any railroad be assessed, that the franchise, roadway, roadbed, rolling stock, etc., be included in one aggregate assessment." Do you remember that meeting? A. Yes, sir.

Q. Do you remember that to assessing by that method Mr. Gildea, Mr. Morehouse, and two other members protested? A. Yes, sir.

Q. What was said as to the reason? A. All four protested.

Q. All except Mr. Dunn? A. Yes, sir.

Q. Mr. Dunn offered the motion, did he? A. I think he did. It was his idea, anyhow, to assess it together as a unit.

Q. Now, what was said as to the grounds of the protest at that time? A. His ground was that the Constitution required that the road should be assessed as a unit. My contention was that the franchise should be assessed separately; I say my contention; you must understand that—and I say it with some modesty, that I had been with the Board before that time, and that year it wanted to consult with me as to how that assessment should be made, and, therefore, I took part in all the discussions.

Q. That was discussed? A. Yes, sir.

Q. What objection was made, if any, in the discussions, to assessing the five items required to be assessed, in one lump sum? A. Suppose I state the history of the question.

Q. That is better. A. I can state it in my own way, and you can draw the inferences of the effect of my position on the minds of the members of the Board. In 1880 I was requested to draw a form of assessment. Looking at the Constitution, I supposed it should be assessed separately—franchise, roadway, roadbed, rails, and rolling stock. The assessment at that time took place in May. In 1882 or 1881, I heard a murmur that the Central Pacific and Southern Pacific Railroads insisted that they had a Federal franchise, and it became my duty then to set the question up.

Q. Before the Board? A. Before the Board; yes, sir. In 1881, having searched the State Library, I came across the case of McCullough vs. The State of Maryland, in which Chief Justice Marshall laid down the rule very clearly that a Federal franchise was not capable of being assessed.

Q. By a State? A. By a State. It seemed so clear to me, I thought it my duty to tell the Board in 1881, that whatever opinion they might have in respect to a segregation of those assessments, they must assess the franchise by itself, as an illegal assessment merged in a legal assessment vitiates the whole thing. They followed my instructions. When the new Board came in, I felt that my reputation as a lawyer was at stake as to the success of the Board.

Q. By the way, you are a regularly educated lawyer, are you not? A. Yes, sir. I brought that question up before the Board in 1883, and took that decision and read it to them.

Q. The decision in the case of McCullough vs. The State of Maryland? A. Yes, sir. They were necessarily assessing the Federal franchise.

Q. And you stated that in those discussions? A. Yes, sir; whether Mr. Dunn heard all the discussions or not, I don't know; but on a certain occasion Mr. Dunn said we ought to assess this property as a unit. I disputed it. He said he had had a discussion with some lawyers in San Francisco, and that he had received a telegram from them, or had telegraphed to them, and the Board wished to get it in writing. Some one prepared a series of questions to Attorney-General Marshall, who was then Attorney-General, Mr. Delmas, and other lawyers, to sign a paper answering those questions.

Q. Is this the paper? A. Yes, sir; I kept a copy of it. [Being the same paper heretofore offered in evidence as containing the questions and the answers of the attorneys.] I felt so much interested in it that I wrote to Mr. Markley, and insisted that the franchise should be assessed separately. He said, "That is my view, but I always felt it safer to go by the decisions of my higher officer," which in this case was the Attorney-General. They then sent for Attorney-General Marshall, and a discussion ensued, in the presence of the Board, between him and myself; and another member; that I can't recall now, took part in the discussion. I called Attorney-General Marshall's attention to the fact that in the form of assessment we necessarily assessed the Federal franchise, and that would be declared unconstitutional; but the general sense, I know, among everybody who was concerned, was that we had a right to assess the Federal franchise; that was the general opinion among the people who hadn't read or studied the question enough. Attorney-General Marshall insisted upon it, and went away.

Q. He felt, though, that they could assess the Federal franchise? A. Yes, sir. Of course, in Mr. Dunn's view, it was because it was a unit that he wanted it assessed that way. I don't remember that the Federal franchise question came into his mind at all.

Q. You don't think he got hold of that? A. No, sir; but before the Board I stated it. I don't think a year has passed that I have not insisted, in season and out of season, that we ought to assess that franchise by itself, in order that the question might be determined. I did it again in 1887. I fortified myself with this decision; but the Board felt that the Attorney-General, and all these other distinguished lawyers, had

given their opinion, and they felt that they ought to follow that distinguished opinion.

Q. It was under these circumstances that this protest was entered in the record against that method of assessment? A. Yes, sir.

Q. Now, when did the Board, by this discussion and action, come to the conclusion that they had no right to include in the value, for assessment purposes, the Federal franchise? A. In the assessment of 1888.

Q. What had happened to cause the Board to come to that conclusion? A. The decision of the Supreme Court, and I want to call your attention to another thing. The Circuit Court of the United States had already rendered a decision, and Judge Field, in that decision, had touched upon the question of the Federal franchise, but had not really decided it; but as that was only a Circuit Court decision, I heard many members of the Board say they would wait until we got a United States Supreme Court decision.

Q. Then you know, of your own knowledge, that during those years the Federal franchise became an element of the assessed value of those roads? A. I know this far, Mr. Cross, I know it from the discussions; I couldn't tell what took place in the men's minds.

Q. Only by the discussions? A. Yes, sir; and agreeing and believing that they had to do this in accordance with this decision.

Q. The same as you know the motives of a man in any other respect—by what he says and does? A. Yes, sir. You asked me if I was present in 1883—you were going to ask me about 1883.

Q. Yes, about this opinion, and how that protest came to be made? A. I recited that. You started to ask me about 1888, when we first made the change.

Q. Oh, yes; what happened in that year? A. In that year, and by the advice of the Attorney-General—Mr. Johnson—we took pains to state in the form that the franchise was derived from the State alone.

Q. So as to exclude it? A. So as to make it certain.

Q. So as to make the record show the exclusion of the Federal franchise? A. Yes, sir.

Q. That was after the decision was rendered by the United States Supreme Court? A. Yes, sir.

Q. Was Mr. Dunn regularly present at those discussions, as other members of the Board were, or was he frequently absent on account of his duties as Controller? A. There is a little confusion about the question of Mr. Dunn's absence. After 1883 the law was changed by which we had to fix a valuation on county assessments. We met the first Monday of August, and continued until the first Monday of September; then there were notices prepared to the railroads to appear at certain stated times; not that they were called on absolutely to appear, but as a matter of courtesy we would like to have them appear so as to avoid legal complications. During those times Mr. Dunn was not present; his duties as Controller kept him in his office. When the dates were set for fixing the assessment by motion—

Q. When the vote was taken? A. Yes; Mr. Dunn was always there. Hence I know that many of these discussions Mr. Dunn never heard of, because during the week which would precede the assessment, I was busy in hunting up the statements in Poor's Manual, the reports of the Directors of the Central Pacific and the Southern Pacific railroads as to the value of the property, and the number of miles was discussed; it was

continually coming up; there was constant discussion of everything; railroads, counties, and everything else.

Q. That is, that was the busy season? A. Yes, sir; and there was no time to sit there and talk.

Q. Did you ever hear Mr. Dunn state the basis upon which he estimated the value of the railroads for assessment purposes? A. Only once that I can recall.

Q. State what that was. A. In 1884 Mr. Dunn stated to the Board that Mr. Delmas was present, and that he had paid a good deal of attention to railroad assessments, and asked if Mr. Delmas might not appear before the Board and make a statement. Mr. Delmas came with a theory upon which railroads should be assessed. In the assessment of that year, Mr. Dunn enforced Mr. Delmas' views as to the assessment of railroads, but the Board didn't adopt them.

Q. That is, the other members of the Board did not? A. Yes, sir.

Q. What did he state as the theory upon which he would assess such properties? A. To find, on the day set for the assessment, the value of the capital stock.

Q. The market value? A. The market value of the capital stock. For instance, the Central Pacific Railroad, and add to it its debts, which were supposed to have accrued by virtue of possession and accretion of property, and deduct from it the value of all other tangible property, real, personal, and mixed, and there you found the assessable value of the railroad for the State Board of Equalization to assess, taking the proportion of miles in this State to the total proportion of the whole system. That was called the Illinois system, which I believe some Court decided was the proper way to get at the assessment of a railroad. That necessarily took in the whole value of everything.

Q. That is, that method of estimating for the purposes of assessment would necessarily include any value which the Federal franchise had? A. I suppose it would; it took in everything.

Q. If the Federal franchise had a value, that would necessarily be included? A. It necessarily went into it.

MR. CROSS: That is all.

THE CHAIRMAN: Does any member of the committee wish to interrogate Mr. Maslin?

SENATOR SEAWELL: You stated a while ago, Mr. Maslin, that you were somewhat apprehensive that the assessment of the Federal franchise would vitiate the assessment. Were you aware at that time that it had two franchises—the Central Pacific, for instance—the State franchise and the Federal franchise? A. I could not have been apprehensive of it unless I had known that it had two.

Q. Then you knew it had two? A. Yes, sir—that is, after 1882.

Q. In such discussions as were had, did the members express themselves as being in favor of assessing the Federal franchise by name? A. I didn't hear any man say, "I am in favor of assessing the Federal franchise"—distinctly state it; but every member knew he was assessing that element of value—the Federal franchise. It was pointed out to him.

Q. Now, say they only had a State franchise, do you think the value of the property would have been less than the amount they placed it at? A. I was not a member of the Board, Mr. Seawell, so I couldn't say whether the value was decreased or increased by that; but I do

know in 1888 that they took off what we thought, or estimated, was the value of the Federal franchise in making the assessment of 1888.

Q. They did take it off? A. Yes, sir.

Q. That was about how many million dollars? A. I can't say that, because I could not state what they would assess it at with the Federal franchise in.

Q. In 1888, that was? A. Yes, sir; that was the first year.

Q. Now, I see that in 1886 they assessed the Central Pacific at twenty millions? A. Yes, sir.

Q. In 1887 at eighteen millions; did it have anything to do with that? A. I don't hardly think it had in 1886. In 1887, you couldn't tell by the variation in the assessment; some members may have changed their judgment as to values. So far as I could determine, the minds of the Assessors or their opinions were somewhat determined by the value of property which was assessed through the State.

Q. Just as other property was assessed? They wanted to assess it upon the same basis? A. Upon the same basis.

Q. In the same proportion to its actual cash value? A. What they believed—what they called its commercial value, I suppose.

Q. I see in 1885 they assessed that same road, the Central Pacific, at twenty-two millions; in 1887, at eighteen millions. The assessment varied four millions of dollars? A. Yes, sir.

Q. You say no Federal franchise was excluded from either of those assessments? A. As I say, I can't tell why the members—you must understand, if I am telling some secrets; perhaps we compromised on those questions.

Q. On the value of the Federal franchise? A. No, on the value of the railroad; if some men can't get one thing they will take another.

Q. Do you think the Board ever assessed — A. Let me ask you one question, Senator. At one time Mr. Dunn moved that the Central Pacific road should be assessed at \$40,000,000 and once at \$25,000,000, and yet his votes after that were recorded at far less than that. Why didn't he stand at the \$40,000,000?

Q. That would have nothing to do with the Federal franchise? A. No, but you asked me why one year it was assessed for less and another year for more.

Q. In 1889 I see you made this statement in relation to the proceedings of the Board. I will read the last portion of the answer you made, on page 164, to a question of Mr. Lezinsky: "Q. You say now when the Board meets"—that was in relation to fences? A. Yes, sir.

Q. "Those questions—those facts—are presented to them; they are open to their inspection, and each member of the Board takes those facts and looks over them, analyzes them, digests them in his mind, and when we meet, one member of the Board says: 'I move that the Central Pacific Railroad Company be assessed —,' at a certain sum. Another member says, 'I amend that by moving that it be assessed —,' at another sum. So motions are put until we have agreed by a majority of the vote that the assessment shall be a certain sum." That was your mode of procedure? A. That is true, yes, sir.

Q. In arriving at that sum was there anything before the Board to indicate a determination on their part to assess any element going to make up the value of the Central Pacific Railroad Company outside of this State? A. Undoubtedly there was. A man would have been a

dunce who would not have taken the whole value—the earnings of the road from Ogden down here—to estimate the whole value of the road in this State. How could he get at it otherwise?

Q. Do you think that there was a different valuation placed upon the road by reason of its having a Federal franchise, than that which would have been placed on it if it had a State franchise only? A. I am only a clerk; I don't know what passed in the minds of the members of the Board. I have only told the truth as I know it. You can draw your own inferences from the discussions between myself and the other members of the Board.

Q. I understand your legal position was correct, but do you think it follows from that, from what occurred, that the Federal franchise was assessed when they had a State franchise? A. If you want my candid opinion, I do think that. Any man who understands the particular value of a railroad company must, per force, have taken the value of the Federal franchise, if that had any value at all.

Q. If the Federal franchise had any value? A. Yes, or the State franchise.

Q. They had a right to assess the State franchise? A. Yes.

Q. Was any right assessed under that name by the Board of Equalization, that they would not have had under the State franchise? A. I have told you over and over again that the right adds a value to it—adds to the value of it. I regarded the Federal franchise as of infinitely more value than the State franchise. Anybody can get that, but only the Central Pacific has any Federal franchise.

Q. It is your opinion that was assessed? A. Yes, sir.

Q. I understand and can see the legal position you are endeavoring to maintain is correct, but the question I want to get at is, whether or not this Federal franchise was assessed, and why it was not put upon the records as a Federal franchise? A. If I had been asked, as a lawyer, I would have adopted exactly the language of the Constitution—as a franchise.

Q. You would just have put franchise? A. Yes, sir. What is a franchise but a right?

Q. You say, as an element of value in ascertaining the value, that this Board did take into consideration the Federal franchise as of value over and above the rights that it would have had under the State franchise, or under a franchise from the State—that that was an element of value in determining the assessment of this road? A. I will repeat again that I constantly urged upon the members of the Board that they were assessing the Federal franchise, and they never denied it; said they were letting that go into the value. When they came to figuring on it, I don't know how they figured it.

Q. Do you think the road was assessed at a sum exceeding 75 per cent of its actual cash value if it had only had a State franchise? A. I can only repeat over again—

Q. I mean the value? A. Put that question again.

Q. Do you think the road, the Central Pacific, was assessed at over 75 per cent of its value if it had had no Federal franchise whatever? A. That is putting me in the attitude of an expert as to values.

Q. You need not answer it. A. I would if I were an expert. If you want to know what I would do as a member of the State Board of

Equalization, I can tell you very quickly. I would lessen the value of a road if it didn't have a Federal franchise.

Q. You would lessen its value if it didn't have? A. Yes, sir.

Q. I was not asking that; perhaps you would assess it at a higher sum than they assessed it at. I am asking if you think that the properties of this company, taking the assessed values of other properties in the State, were assessed at a sum exceeding 75 per cent of its actual cash value, provided it didn't have a franchise—taking that away entirely? A. To answer that question, you would have to ask me each year, and then I would have to be thoroughly conversant with the values in all the counties in the State. I would be very glad to answer if I could.

Q. You were for many years Clerk of the Board? A. Yes; but I would have to travel all parts, throughout all the different counties, to ascertain what I believe to be the value, and when I came back I never bothered about what they did there, in assessing the value of the road.

Q. You participated largely in the discussions of the Board in arriving at values? In other words, you were authority in the Board upon valuations? A. Not in respect to their judgment of things; perhaps about what ought to be done, very likely they left a good deal to me; I can't say.

Q. Do you think the assessment, as it stands upon the books, indicates that the Federal franchise was assessed? A. I would have to be an expert in the matter of books to answer that.

Q. That is a simple matter of interpretation. You have got a franchise, a roadway, rolling stock, etc. A. From what I understood, I can't tell what the members assessed.

Q. But do you think the records there—from what you have got written—does that indicate by itself that the Federal franchise was assessed? A. That is a legal question.

Q. But you are a lawyer, and a good one, too. A. Thank you, sir. That is a question for the Supreme Court of the United States to decide.

MR. DUNN: You said that you had informed the members of the Board when they assessed a franchise or franchises to the Central Pacific and Southern Pacific, they were necessarily assessing the Federal franchise? A. I did, undoubtedly.

Q. Was that your opinion? A. Yes, sir.

Q. Was there any declaration, in the shape of a motion, or in any form at all, that the Federal franchise should be included in the assessment? A. Not on the books.

Q. Was there such a declaration in the shape of a motion, or declaration, or in any shape, that they were assessing the Federal franchise? A. No, sir; the records show there was not.

Q. In that opinion which has been called to your attention—which I suppose you are quite familiar with—received from Mr. Marshall? A. Yes, I know it.

Q. Can you find anything in that that advises the Board that they had a right to assess the Federal franchise? A. No, sir, there is not, nor is there anything in there that says you shall not, either. I stated that your theory was that it should be assessed as a unit; the Federal franchise at that time had not come into your mind; you had not suggested that to the Board—the question of the Federal franchise. Your idea was that it should be assessed as a unit; but when Mr. Marshall came in and entered into a discussion with me, I especially

objected to assessing it as a unit, on the ground that you would assess the Federal franchise. Mr. Marshall never disputed that question.

Q. It is your opinion, I understand, that by assessing a franchise to the Central Pacific and Southern Pacific roads, we were necessarily assessing the Federal franchise? A. Yes, sir.

Q. Did the members so declare at any time, that they were assessing the Federal franchise? A. Yes, declared to me that they were necessarily assessing the Federal franchise.

Q. Can you find anything on the records to that effect? A. I am simply giving conversations.

THE CHAIRMAN: He says there is no such thing on the records.

MR. CROSS: There has been talk here about your assessing or not assessing the Federal franchise. How do you account for the fact that when the franchise was separately valued, that the value of the road having a Federal franchise was from three to three thousand times as much per mile as of the roads that didn't have a Federal franchise? A. I can't account for that.

Q. The record shows that fact? A. Yes, sir.

Q. When the Board was assessing the franchise, and giving it a value separately of the Central Pacific, they assessed it from three to three thousand times as much per mile as the franchises of other roads.

SENATOR SEAWELL: Do you mean three thousand times as much?

MR. CROSS: Yes, sir. They were assessing these roads at \$1 per mile, and assessing the Central Pacific at \$3,000. Here are the records—some at \$25, some at \$26, and one at \$1 per mile.

THE CHAIRMAN: I would like to ask one question. Did the Board understand, at the time these assessments were made, that this Federal franchise authorized the road to run from Ogden to the State of California, through the State of Nevada? A. Certainly; four members of the Board did. As I say, I never interfered with the Chairman in the discussions when they were making motions; that was not my place, but in the discussions during the week previous, I put my word in.

Q. Would a franchise that authorized a road to run through another State and into another Territory, be more valuable than a franchise that confined the operations of the road to the State of California? A. I should think so, very naturally.

THE CHAIRMAN: That is all.

THE WITNESS: I don't like to speak to a question of privilege, but the "Examiner" has an article in which I am accused—I think I know the source it comes from—of being a friend of the railroad, and the Secretary of the State Board of Trade because the road put me there. I am only here to tell the truth. I know the criticism that will come from my testimony. The railroad company are no friends of mine. Otherwise I would to-day be on the State Board of Equalization.

THE CHAIRMAN: Nobody thinks you would not tell the truth, Mr. Maslin, I think.

MR. CROSS: I wish to introduce the statute granting the Federal franchise, and also the statute of the State.

THE CHAIRMAN: They will be considered introduced, and you can hand them to the committee at any time.

[Testimony closed.]

"EXHIBIT B."

TENDER OF TAXES OF 1885, DECEMBER 10, 1885.

E. Black Ryan, Tax Agent of the Southern Pacific Company, was in the city yesterday, and tendered to the State Controller sixty per cent of the railroad taxes for 1885, as assessed by the State Board of Equalization. The amount of taxes upon the several roads, as per such assessment, is as follows: Central Pacific Railroad Company, \$375,013 47; Southern Pacific Railroad Company, \$269,289 13; California Pacific Railroad Company, \$28,859 21; N. R. W. Company, \$31,499 95; S. P. and T. Railroad Company, \$10,702 17; Am. Branch Railroad Company, \$2,469; Sacramento and Placerville Railroad Company, \$5,111 43; Stockton and Copperopolis Railroad Company, \$4,568 62; Pajaro and Santa Cruz Railroad Company, \$2,716 01; V. V. and C. L. Railroad Company, \$2,389 81. Total, \$732,619 70. The amount tendered—sixty per cent of the above—was \$429,218 34, but the Controller declined to accept less than full payment, whereupon Mr. Ryan paid in the full amount upon the following roads: Am. Branch Railroad Company, \$2,469; Sacramento and Placerville Railroad Company, \$5,111 43; Stockton and Copperopolis Railroad Company, \$4,568 62; Pajaro and Santa Cruz Railroad Company, \$2,716 01; Vaca Valley and Clear Lake Railroad Company, \$2,389 81. Total paid, \$17,255 72.

Judge S. C. Denson is a witness to the above.

"EXHIBIT C."

Statement Showing the Assessed Valuation of Certain Railways and Railroads, as fixed by the State Board of Equalization, the Amount of Tax Levied thereon, the Amount Paid, and Date of Payment.

Name of Railway.	Assessed Value.	State and County Tax.	Amount Paid.	When Paid.
1888.				
Amador Branch Railroad.....	\$135,000 00	\$1,787 50	\$1,787 50	Dec. 28, 1888.
California Pacific Railroad.....	2,500,000 00	33,623 22	33,623 22	Dec. 28, 1888.
Central Pacific Railroad.....	15,000,000 00	218,312 76	218,312 76	Dec. 28, 1888.
Northern Railway.....	2,225,000 00	27,640 09	27,640 09	Dec. 28, 1888.
Pajaro and Santa Cruz Railroad.....	150,000 00	2,186 05	2,186 05	Dec. 28, 1888.
Sacramento and Placerville R.R.....	300,000 00	4,639 18	4,639 18	Dec. 28, 1888.
San Pablo and Tulare Railroad.....	900,000 00	10,294 23	10,294 23	Dec. 28, 1888.
S. P. and Tulare Extension R.R.....	180,000 00	1,980 00	1,980 00	Dec. 28, 1888.
Southern Pacific Railroad.....	14,000,000 00	186,756 60	186,756 60	Dec. 28, 1888.
Southern Pacific Branch R. R.....	625,000 00	8,334 68	8,334 68	Dec. 28, 1888.
Stockton and Copperopolis R.R.....	350,000 00	3,856 57	3,856 57	Dec. 28, 1888.
Stockton and Tulare Railroad.....	149,000 00	1,676 80	1,676 80	Dec. 28, 1888.
Vaca Valley and Clear Lake R. R.....	250,000 00	3,269 47	3,269 47	Dec. 28, 1888.
S. Joaquin & Sierra Nevada R. R.....	150,000 00	1,872 71	1,872 71	Dec. 28, 1888.
South Pacific Coast Railroad.....	1,275,000 00	15,449 86	15,449 86	Dec. 28, 1888.
Totals.....	\$38,189,000 00	\$521,679 70	\$521,679 70	
1889.				
California Pacific Railroad.....	\$2,500,000 00	\$38,994 14	\$38,994 14	Dec. 30, 1889.
Central Pacific Railroad.....	13,000,000 00	222,401 35	222,401 35	Dec. 30, 1889.
Southern Pacific Railroad.....	15,000,000 00	244,880 16	244,880 16	Dec. 30, 1889.
Northern Railway.....	3,500,000 00	54,080 56	54,080 56	Dec. 30, 1889.
South Pacific Coast Railroad.....	1,275,000 00	19,613 90	19,613 90	Dec. 30, 1889.
Northern California Railroad.....	125,000 00	2,189 04	2,189 04	Dec. 30, 1889.
Totals.....	\$35,400,000 00	\$582,159 15	\$582,159 15	
1890.				
California Pacific Railroad.....	\$2,500,000 00	\$35,037 24	\$35,037 24	Dec. 29, 1890.
Central Pacific Railroad.....	13,000,000 00	205,421 43	205,421 43	Dec. 29, 1890.
Northern Railway.....	3,000,000 00	41,278 71	41,278 71	Dec. 29, 1890.
Northern California Railroad.....	125,000 00	1,991 78	1,991 78	Dec. 29, 1890.
Southern Pacific Railroad.....	15,000,000 00	226,480 69	226,480 69	Dec. 29, 1890.
South Pacific Coast Railroad.....	1,275,000 00	18,092 04	18,092 04	Dec. 29, 1890.
Totals.....	\$34,900,000 00	\$528,301 89	\$528,301 89	

EXHIBIT C—Continued.

Name of Railway.	Assessed Value.	State and County Tax.	Amount Paid.	When Paid.
1891.				
California Pacific Railroad.....	\$2,500,000 00	\$31,791 52	\$31,791 52	Nov. 28, 1891; Apr. 25, 1892.
Central Pacific Railroad.....	13,000,000 00	193,584 88	193,584 88	Nov. 28, 1891; Apr. 25, 1892.
Northern California Railroad.....	225,000 00	3,236 76	3,236 76	Nov. 28, 1891; Apr. 25, 1892.
Northern Railway.....	3,000,000 00	39,918 46	39,918 46	Nov. 28, 1891; Apr. 25, 1892.
Southern Pacific Railroad.....	15,500,000 00	229,138 80	229,138 80	Nov. 28, 1891; Apr. 25, 1892.
South Pacific Coast Railroad.....	1,300,000 00	16,853 22	16,853 22	Nov. 28, 1891; Apr. 25, 1892.
Totals.....	\$35,525,000 00	\$514,523 64	\$514,523 64	
1892.				
Central Pacific Railroad.....	\$13,000,000 00	\$191,410 00	\$95,705 16	Nov. 28, 1892.
Northern California Railroad.....	265,000 00	3,408 42	1,704 21	Nov. 28, 1892.
Northern Railway.....	3,082,000 00	40,037 74	20,018 87	Nov. 28, 1892.
South Pacific Coast Railroad.....	1,300,000 00	15,854 30	7,927 15	Nov. 28, 1892.
Southern Pacific Railroad.....	15,800,000 00	218,455 42	109,227 71	Nov. 28, 1892.
California Pacific Railroad.....	2,000,000 00	23,795 92	11,897 96	Nov. 28, 1892.
Totals.....	\$35,447,000 00	\$492,962 12	\$246,481 06	

RECAPITULATION.

Name of Railway.	Total Assessed Value.	Total State and County Taxes.	Total Amount Paid.	When Paid.
1888—Southern Pacific Co.....	\$38,189,000 00	\$521,679 70	\$521,679 70	Dec. 28, 1888.
1889—Southern Pacific Co.....	35,400,000 00	582,159 15	582,159 15	Dec. 30, 1889.
1890—Southern Pacific Co.....	34,900,000 00	528,301 89	528,301 89	Dec. 29, 1890.
1891—Southern Pacific Co.....	35,525,000 00	514,523 64	514,523 64	Nov. 28, 1891; Apr. 25, 1892.
1892—Southern Pacific Co.....	35,447,000 00	492,962 12	246,481 06	Nov. 28, 1892; 1st instalment

SACRAMENTO, January 27, 1893.

I hereby certify the foregoing statement is true and correct, as appears from the records of my office.

[SEAL.]

E. P. COLGAN,
State Controller.

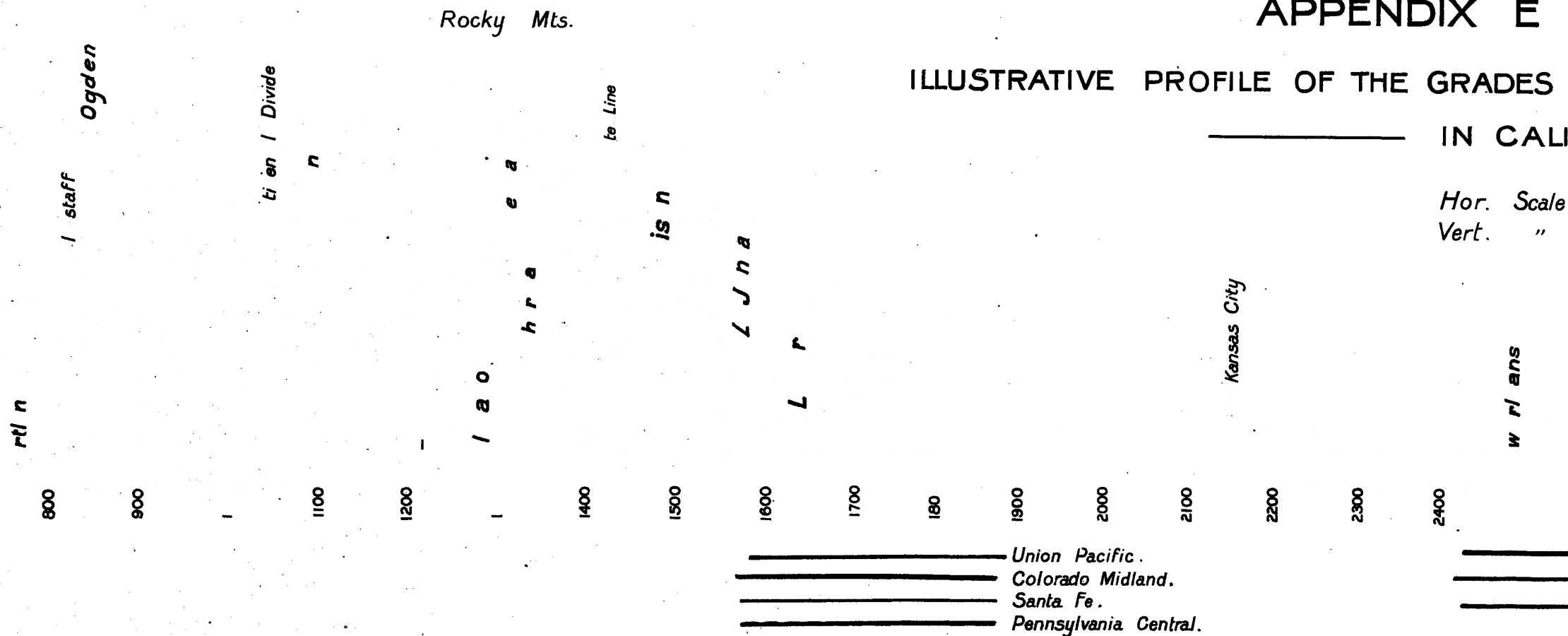
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APPENDIX E

ILLUSTRATIVE PROFILE OF THE GRADES

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Senate Constitutional Amendment No. 8.

INTRODUCED BY MR. GESFORD,

JANUARY 11, 1893.

REFERRED TO COMMITTEE ON CONSTITUTIONAL AMENDMENTS.

A RESOLUTION

Proposing to the people of the State of California an Amendment to the Constitution, repealing Sections 22 and 23 of Article XII of said Constitution, relating to the Railroad Commission, and adding to Article IV of said Constitution a new section, to be known and numbered as Section 36, relating to railroad freights and fares.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California, at its thirtieth session, commencing on the second day of January, A. D. eighteen hundred and ninety-three, two thirds of all the members elected to each house of said Legislature voting in favor thereof, hereby proposes that sections twenty-two and twenty-three of article twelve of the Constitution of the State of California be repealed, and that said Constitution be amended by the addition thereto, and to article four thereof, of a new section, to be known and numbered as section thirty-six; said proposed new section to read as follows:

Section 36. It shall be the duty of the Legislature, at the first regular session thereof after the adoption of this amendment, to prescribe the rates of fares to passengers, and to provide a classification of property, and to fix and determine the rates of freight to be charged for the transportation on all railroads in the State of California; and until such legislation shall be enacted and go into effect, or whenever no such enactment shall be in operation, the charges of transportation by such railroads shall be: For the transportation of passengers, not more than two cents per mile; and the charges for freight and merchandise shall not be more than the charges specified in the distance tariff in this section hereinafter mentioned and set forth, the same being hereby designated as "The California Distance Tariff." The classification referred to in said California Distance Tariff is that adopted and issued by the Western Classification Committee (of which J. T. Ripley was Chairman), and which took effect January first, eighteen hundred and ninety-three. Said California Distance Tariff, including the rules forming a part thereof, and governing the same, is as follows, to wit:

CALIFORNIA DISTANCE TARIFF.

Applicable to local traffic between all stations in the State of California, subject to the Western Classification and the rules governing the same, which took effect January 1, 1893:

Distances.	Merchandise—Rate per 100 Pounds, in Cents.		Carloads of Not Less than Minimum Named in Classification, nor More than Marked Capacity of Car—Rate per 100 Pounds, in Cents.												Live Stock in Car loads—Rate per 100 Pounds, in Cents.				
	First Class	Second Class	Third Class	Fourth Class	Fifth Class	Class A	Class B	Class C	Class D	Class E	Lumber, Lath, and Shingles	Salt, Lime, Cement, and Stucco	Coal	Wheat, Flour, Flaxseed, Castor Beans, Broom-corn Seed, and Beans	Barley, Rye, Oats, Corn, Millstuffs, and Chops	Stone and Brick (common or pressed), Sand, Clay (common)	Horses and Mules	Cattle and Hogs (Single Deck Cars, as to Hogs)	Sheep (Single Deck Cars)
5 miles and under	3 1/2	3 3/4	3 3/4	3 3/4	3	3	3	3	3	3	3	3	2 1/2	2 1/2	2 1/2	2 1/2	3	3	5
10 miles and over 5 miles	4 1/2	4	4	4	3 1/2	4	3 1/2	3 1/2	3 1/2	3	3	3	3	2 1/2	2 1/2	2 1/2	4	4	5
15 miles and over 10 miles	8	7	7	7	5	6	5	5	5	4	4	4	3 1/2	3 1/2	3 1/2	3 1/2	5	5	6
20 miles and over 15 miles	12	10	9	8	6	7	6	6	6	5	5	5	4	4	4	4	6	6	7
25 miles and over 20 miles	15	12	11	9	7	8	7	7	7	6	6	6	5 1/2	5 1/2	5 1/2	5 1/2	7	7	8
30 miles and over 25 miles	18	14	13	11	8	9	8	8	8	7	7	7	6	6	6	6	8	8	9
35 miles and over 30 miles	20	16	14	13	9	10	9	9	9	8	8	8	7	7	7	7	9	9	10
40 miles and over 35 miles	22	18	15	14	10	11	10	10	10	9	9	9	8	8	8	8	10	10	11
45 miles and over 40 miles	24	19	17	15	11	12	11	11	11	10	10	10	9	9	9	9	11	11	12
50 miles and over 45 miles	25	20	18	16	12	13	12	12	12	11	11	11	10	10	10	10	12	12	13
55 miles and over 50 miles	27	22	20	17	13	14	13	13	13	12	12	12	11	11	11	11	14	14	15
60 miles and over 55 miles	28	23	21	18	14	15	14	14	14	13	13	13	12	12	12	12	15	15	16
65 miles and over 60 miles	30	24	22	19	15	16	15	15	15	14	14	14	13	13	13	13	16	16	17
70 miles and over 65 miles	32	25	23	20	16	17	16	16	16	15	15	15	14	14	14	14	17	17	18
75 miles and over 70 miles	33	26	24	21	17	18	17	17	17	16	16	16	15	15	15	15	18	18	19
80 miles and over 75 miles	35	28	26	22	18	19	18	18	18	17	17	17	16	16	16	16	19	19	20
85 miles and over 80 miles	37	29	27	23	19	20	19	19	19	18	18	18	17	17	17	17	20	20	21
90 miles and over 85 miles	38	30	28	24	20	21	20	20	20	19	19	19	18	18	18	18	21	21	22
95 miles and over 90 miles	39	31	29	25	21	22	21	21	21	20	20	20	19	19	19	19	22	22	23
100 miles and over 95 miles	40	32	30	26	22	23	22	22	22	21	21	21	20	20	20	20	23	23	24
105 miles and over 100 miles	41	33	31	27	23	24	23	23	23	22	22	22	21	21	21	21	24	24	25
110 miles and over 105 miles	42	34	32	28	24	25	24	24	24	23	23	23	22	22	22	22	25	25	26
115 miles and over 110 miles	43	35	33	29	25	26	25	25	25	24	24	24	23	23	23	23	26	26	27
120 miles and over 115 miles	44	36	34	30	26	27	26	26	26	25	25	25	24	24	24	24	27	27	28
125 miles and over 120 miles	45	36	34	30	26	27	26	26	26	25	25	25	24	24	24	24	27	27	28
130 miles and over 125 miles	46	37	35	31	27	28	27	27	27	26	26	26	25	25	25	25	28	28	29
135 miles and over 130 miles	47	38	36	32	28	29	28	28	28	27	27	27	26	26	26	26	29	29	30

140 miles and over 135 miles.....	48	39	34	28	23	25	18	14	11	8	11	12	12	8	10	9	7½	16	14
145 miles and over 140 miles.....	49	39	34	28	23	25	19	14	11	9	9	12	13	8	10	9	7½	15	13
150 miles and over 145 miles.....	50	40	35	29	24	26	19	15	11	9	10	13	13	8	11	10	7½	15	13
155 miles and over 150 miles.....	51	40	35	29	24	26	20	15	11	9	10	13	13	8	11	10	7½	16	14
160 miles and over 155 miles.....	52	41	36	30	25	27	20	16	11	9	10	13	14	8	11	10	8	16	15
165 miles and over 160 miles.....	53	42	37	30	25	27	20	16	11	9	10	13	14	8	11	10	8	16	15
170 miles and over 165 miles.....	54	43	38	31	26	28	21	16	12	10	10	14	14	8½	11	10	8	17	16
175 miles and over 170 miles.....	55	44	39	32	27	29	22	17	12	10	10	14	15	9	12	10	8	18	16
180 miles and over 175 miles.....	56	44	39	32	27	29	22	17	12	10	10	14	15	9	12	10	8	18	16
185 miles and over 180 miles.....	57	45	40	33	28	30	22	17	12	10	10	14	15	8½	11	10	8	19	17
190 miles and over 185 miles.....	58	46	40	33	28	30	23	18	12	10	10	14	15	8½	11	10	8	19	17
195 miles and over 190 miles.....	59	47	41	34	29	31	23	18	13	10	10	14	15	9	12	11	8	19	17
200 miles and over 195 miles.....	60	48	42	35	30	32	24	19	13	11	11	14	15	9	12	11	8	19	17
210 miles and over 200 miles.....	62	50	43	36	31	33	25	20	14	12	11	14	15	9	12	11	9	20	18
220 miles and over 210 miles.....	64	51	44	37	32	34	26	21	14	12	11	15	16	9½	12½	11½	9½	20	18
230 miles and over 220 miles.....	65	52	45	38	33	35	27	21	15	12	12	16	16	9½	12½	11½	9½	21	19
240 miles and over 230 miles.....	66	53	46	39	34	36	28	22	15	12	12	16	16	10	13	11½	10½	21	19
250 miles and over 240 miles.....	68	54	47	40	35	37	29	23	16	13	13	17	17	10	13	12	10	22	20
260 miles and over 250 miles.....	69	55	48	41	36	38	30	24	16	13	13	17	17	10½	13½	12	10	22	20
270 miles and over 260 miles.....	70	56	49	42	37	39	31	24	16	14	14	18	18	11	14	12½	10½	22	20
280 miles and over 270 miles.....	72	58	50	43	38	40	31	25	17	14	14	18	18	11½	14½	12½	11	23	21
290 miles and over 280 miles.....	73	59	51	44	39	41	32	26	17	14	15	19	19	12	15	13	11	24	22
300 miles and over 290 miles.....	75	60	52	45	40	43	33	26	18	15	15	19	19	12	15	13	11	24	22
310 miles and over 300 miles.....	76	61	53	46	41	44	34	27	18	15	15	19	19	12	15	13	11	24	22
320 miles and over 310 miles.....	78	62	54	47	42	45	34	27	18½	15½	15½	20	19½	12	15	13	11	25	23
330 miles and over 320 miles.....	80	64	55	48	43	46	34	27	19	16	16	21	20	13	15½	13½	11½	25	22
340 miles and over 330 miles.....	81	65	56	49	44	47	35	28	19	16	16	21	20	13	15½	13½	11½	25	22
350 miles and over 340 miles.....	83	66	57	50	45	48	36	28	19	16	16	21	20	13	15½	13½	11½	26	23
360 miles and over 350 miles.....	84	67	58	51	46	49	36	29	19½	16½	16½	21	20	13	15½	13½	11½	27	23
370 miles and over 360 miles.....	85	68	59	52	47	50	37	29	20	17	17	22	21	14	16	14	12	27	23
380 miles and over 370 miles.....	87	70	60	53	48	51	38	30	20½	17½	17½	22	22	14½	16½	14½	12½	28	24
390 miles and over 380 miles.....	89	71	60	53	48	51	38	30	21	18	18	23	23	15	16½	14½	12½	28	24
400 miles and over 390 miles.....	90	72	61	54	49	52	39	31	21	18	18	23	23	15	16½	14½	12½	28	24
410 miles and over 400 miles.....	91	73	61	54	49	52	39	31	21	18	18	23	23	15	16½	14½	12½	28	24
420 miles and over 410 miles.....	92	74	62	55	50	53	40	31	21½	18½	18½	24	24	15	17	15	13	29	24
430 miles and over 420 miles.....	94	75	63	56	51	54	41	32	22	19	19	24	24	15½	17½	16	13½	30	25
440 miles and over 430 miles.....	95	76	64	57	52	55	41	32	22	19	19	24	24	15½	17½	16	13½	31	25
450 miles and over 440 miles.....	97	77	65	58	53	56	42	33	22½	19½	19½	24½	24½	16	18	16	14	31	25
460 miles and over 450 miles.....	98	78	66	59	54	57	42	33	22½	19½	19½	24½	24½	16	18	16	14	32	26
470 miles and over 460 miles.....	100	79	67	59	54	57	43	34	23	20	20	25	24	16	18½	16½	14	32	26
480 miles and over 470 miles.....	101	80	68	60	55	58	43	34	23	20	20	25	24	16	18½	16½	14	32	26
490 miles and over 480 miles.....	102	81	68	60	55	58	43	34	23	20½	20½	25	25	16	19	17	14½	33	27
500 miles and over 490 miles.....	103	82	69	61	56	59	44	35	24	21	21	26	26	16½	19½	19½	14½	33	27
510 miles and over 500 miles.....	104	83	70	62	57	60	44	35	24	21	21	26	27	17	20	18	15	34	28
520 miles and over 510 miles.....	106	84	71	63	58	61	45	36	24½	21½	21½	26½	27	17½	20½	18½	15½	34	28

Distances.	Merchandise—Rate per 100 Pounds, in Cents.				Carloads of Not Less than Minimum Named in Classification, nor More than Marked Capacity of Car—Rate per 100 Pounds, in Cents.												Live Stock in Carloads—Rate per 100 Pounds, in Cents.		
	First Class.	Second Class.	Third Class.	Fourth Class.	Fifth Class.	Class A.	Class B.	Class C.	Class D.	Class E.	Lumber, Lath, and Shingles.	Salt, Lime, Cement, and Stucco.	Coal.	Wheat, Flour, Flaxseed, Castor Beans, Broom-corn Seed, and Beans.	Barley, Rye, Oats, Corn, Mill Stuffs, and Chops.	Stone and Brick (common or pressed), Sand, Clay (common).	Horses and Mules.	Cattle and Hogs (Single Deck Cars, as to Hogs).	Sheep (Single Deck Cars).
530 miles and over 520 miles.....	107	85	71	63	58	61	45	36	25	22	27	28	17½	20½	18½	15½	35	29	37
540 miles and over 530 miles.....	108	86	72	64	59	62	46	37	25½	22½	27½	28½	18	21½	19½	16	35½	29½	37½
550 miles and over 540 miles.....	109	87	73	65	60	63	47	38	26	23	28	29	18½	22	20	16½	36	30	38
560 miles and over 550 miles.....	110	88	74	66	61	64	48	39	26½	23½	28½	30	19	22½	20½	17	36½	30½	39
570 miles and over 560 miles.....	111	89	75	67	62	65	49	40	27	24	29	31	19½	23	21	17½	37	31	40
580 miles and over 570 miles.....	112	90	76	68	63	66	50	41	27½	24½	29½	31½	20	24	22	18½	37½	32	41
590 miles and over 580 miles.....	113	91	77	69	64	67	51	42	28	25	30	32	20½	25	23	19	38	33	42
600 miles and over 590 miles.....	114	92	78	70	65	68	52	43	28½	25½	30½	32½	21	26	24	20	38½	34	43
610 miles and over 600 miles.....	115	93	79	71	66	69	53	44	29	26	31	33	21½	27	25	21	39	35	44
620 miles and over 610 miles.....	116	94	80	72	67	70	54	45	29½	26½	31½	33½	22	28	26	22	39½	36	45
630 miles and over 620 miles.....	117	95	81	73	68	71	55	46	30	27	32	34	22½	29	27	23	40	37	46
640 miles and over 630 miles.....	118	96	82	74	69	72	56	47	30½	27½	32½	34½	23	30	28	24	40½	38	47
650 miles and over 640 miles.....	119	97	83	75	70	73	57	48	31	28	33	35	23½	31	29	25	41	39	48
660 miles and over 650 miles.....	120	98	84	76	71	74	58	49	31½	28½	33½	35½	24	32	30	26	41½	40	49
670 miles and over 660 miles.....	121	99	85	77	72	75	59	50	32	29	34	36	25	33	31	27	42	41	
680 miles and over 670 miles.....	122	100	86	78	73	76	60	51	32½	29½	34½	36½	26	34	32	28	42½	42	
690 miles and over 680 miles.....	123	101	87	79	74	77	61	52	33	30	35	37	27	35	33	29	43	43	
700 miles and over 690 miles.....	124	102	88	80	75	78	62	53	33½	30½	35½	37½	28	36	34	30	43½	44	
710 miles and over 700 miles.....	125	103	89	81	76	79	63	54	34	31	36	38	29	37	35	31	44	45	
720 miles and over 710 miles.....	126	104	90	82	77	80	64	55	34½	31½	36½	38½	30	38	36	32	44½	46	
730 miles and over 720 miles.....	127	105	91	83	78	81	65	56	35	32	37	39	31	39	37	33	45	47	
740 miles and over 730 miles.....	128	106	92	84	79	82	66	57	35½	32½	37½	39½	32	40	38	34	45½	48	
750 miles and over 740 miles.....	129	107	93	85	80	83	67	58	36	33	38	40	33	41	39	35	46	49	
760 miles and over 750 miles.....	130	108	94	86	81	84	68	59	36½	33½	38½	40½	34	42	40	36	46½	50	
770 miles and over 760 miles.....	131	109	95	87	82	85	69	60	37	34	39	41	35	43	41	37	47	51	
780 miles and over 770 miles.....	132	110	96	88	83	86	70	61	37½	34½	39½	41½	36	44	42	38	47½	52	
790 miles and over 780 miles.....	133	111	97	89	84	87	71	62	38	35	40	42	37	45	43	39	48	53	
	134	112	98	90	85	88	72	63	38½	35½	40½	42½	38	46	44	40	48½	54	

800 miles and over 790 miles.	135	108	90	81	76	80	60	48	31	28	34	36	24	29	27	21	44	37	50
810 miles and over 800 miles.	136	109	91	82	77	81	61	49	31½	28½	34½	36½	24½	30	27½	21½	44½	37½	50½
820 miles and over 810 miles.	137	110	92	83	78	82	62	50	32	29	35	37	25	30½	28½	22	45	38	51
830 miles and over 820 miles.	138	111	93	84	79	83	63	51	32½	29½	35½	37½	25½	31	29	22½	45½	39	52
840 miles and over 830 miles.	139	112	94	85	80	84	64	52	33	30	36	38	26	32	30	23	46	40	53
850 miles and over 840 miles.	140	113	95	86	81	85	65	53	33½	30½	36½	38½	26½	33	31	23½	46½	41	54
860 miles and over 850 miles.	141	114	96	87	82	86	66	54	34	31	37	39	27	34	32	24	47	42	55
870 miles and over 860 miles.	142	115	97	88	83	87	67	55	34½	31½	37½	39½	27½	35	33	24½	47½	43	56
880 miles and over 870 miles.	143	116	98	89	84	88	68	56	35	32	38	40	28	36	34	25	48	44	57
890 miles and over 880 miles.	144	117	99	90	85	89	69	57	35½	32½	38½	40½	28½	37	35	25½	48½	45	58
900 miles and over 890 miles.	145	118	100	91	86	90	70	58	36	33	39	41	29	38	36	26	49	46	59
910 miles and over 900 miles.	146	119	101	92	87	91	71	59	36½	33½	39½	41½	29½	39	37	26½	49½	47	60
920 miles and over 910 miles.	147	120	102	93	88	92	72	60	37	34	40	42	30	40	38	27	50	48	
930 miles and over 920 miles.	148	121	103	94	89	93	73	61	37½	34½	40½	42½	31	41	39	28	50½	49	
940 miles and over 930 miles.	149	122	104	95	90	94	74	62	38	35	41	43	32	42	40	29	51	50	
950 miles and over 940 miles.	150	123	105	96	91	95	75	63	38½	35½	41½	43½	33	43	41	30	51½	51	
960 miles and over 950 miles.																			
970 miles and over 960 miles.																			
980 miles and over 970 miles.																			
990 miles and over 980 miles.																			
1,000 miles and over 990 miles.																			

VIII

1. This tariff shall apply to individual railroads, in this State, and they shall be considered independently in computing distances, except that a system of railroads consisting of leased, operated, or independent roads, operated under a common management, although working under different charters, shall be considered as one road, and the distance shall be computed over the shortest operated line composed of two or more of such roads.

2. When the rates herein named and the Western Classification heretofore referred to conflict, the rates named in this tariff shall govern.

3. MINIMUM CHARGES.—Single shipments of one or more classes will be charged for at the actual weight at tariff rates, subject to a minimum charge of twenty-five cents for the entire consignment for distances of five hundred miles or less, and fifty cents for greater distances.

RULES GOVERNING SHIPMENTS OF LIVE STOCK IN CARLOADS.

MINIMUM WEIGHTS.—Horses and mules, cattle, hogs, and sheep shall be way-billed at the minimum weights named below, subject to correction at destination to actual weight, but in no case less than the following minimums:

	Horses and Mules.	Cattle and Hogs (S. D.)	Sheep (S. D.)
Cars 27 feet 6 inches long, inside measurement.....	17,700	16,800	10,000
Cars 28 feet long, inside measurement.....	18,000	17,100	10,200
Cars 28 feet 6 inches long, inside measurement.....	18,400	17,500	10,400
Cars 29 feet long, inside measurement.....	18,800	17,900	10,600
Cars 29 feet 6 inches long, inside measurement.....	19,000	18,000	10,800
Cars 30 feet long, inside measurement.....	19,400	18,400	11,000
Cars 30 feet 6 inches long, inside measurement.....	19,700	18,700	11,200
Cars 31 feet long, inside measurement.....	20,000	19,000	11,400
Cars 31 feet 6 inches long, inside measurement.....	20,300	19,300	11,500
Cars 32 feet long, inside measurement.....	20,600	19,600	11,700
Cars 32 feet 6 inches long, inside measurement.....	20,900	19,900	11,800
Cars 33 feet long, inside measurement.....	21,200	20,100	12,000
Cars 33 feet 6 inches long, inside measurement.....	21,600	20,500	12,200
Cars 34 feet long, inside measurement.....	21,800	20,700	12,300
Cars 34 feet 6 inches long, inside measurement.....	22,200	21,100	12,400
Cars 35 feet long, inside measurement.....	22,600	21,500	12,600
Cars 35 feet 6 inches long, inside measurement.....	22,900	21,800	12,800
Cars 36 feet long, inside measurement.....	23,200	22,000	13,000

Committee Substitute for Senate Constitutional Amendment No. 8.

INTRODUCED BY MR. GESFORD,

JANUARY 11, 1893.

REFERRED TO COMMITTEE ON CONSTITUTIONAL AMENDMENTS.

A RESOLUTION

Proposing an Amendment to the Constitution of the State of California, repealing Sections 22 and 23 of Article XII of said Constitution, relating to the Railroad Commission, its powers and duties, and adding a new section to Article IV of said Constitution, to be numbered Section 36, relating to railroad freights and fares.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California, at its thirtieth session, commencing on the second day of January, A. D. eighteen hundred and ninety-three, two thirds of all the members elected to each house of said Legislature voting in favor thereof, hereby proposes that sections twenty-two and twenty-three of article twelve of the Constitution of the State of California be repealed, and that article four of said Constitution be amended by adding to said article a new section, to be numbered section thirty-six.

SECTION 1. Section twenty-two of article twelve of the Constitution of the State of California is hereby repealed.

SEC. 2. Section twenty-three of article twelve of the Constitution of the State of California is hereby repealed.

SEC. 3. Article four of the Constitution of the State of California is hereby amended by adding to said article a new section, to be numbered section thirty-six, said new section to read as follows:

Section 36. The Legislature shall have the power, and it shall be its duty, to establish rates of charges for the transportation of passengers and freight by all railroads operated in this State, and to enact such laws as may be necessary for the enforcement and carrying into effect of such rates; *provided, however,* that the Legislature shall have no power to prescribe rates of charges for the transportation of passengers on any railroad or system of railroads whose gross annual earnings are more than four thousand dollars a mile, to exceed three cents per mile; *and provided further,* that the Legislature shall have no power to prescribe the rates of charges for the transportation of freight on any railroad or system of railroads whose gross annual earnings are more than four thousand dollars a mile, to exceed the rates specified by the "California Distance Tariff," as in this section hereinafter set forth. Until the Legislature shall prescribe such rates as aforesaid, or in the event that any such prescribed rates shall from any cause become inoperative,

the rates of charges for the transportation of passengers on all railroads in this State whose gross annual earnings are more than four thousand dollars a mile, shall be three cents per mile; and the charges for the transportation of freight by any such railroad, shall be the rates specified in the following distance tariff, hereby designated as the "California Distance Tariff," to wit:

CALIFORNIA DISTANCE TARIFF.

This distance tariff shall be applicable to local traffic between all stations in the State of California now established or that may hereafter be established. The classifications of property provided for in this distance tariff are based upon the "Western Classification," and the rules governing the same adopted and issued by the Western Classification Committee, of which J. T. Ripley was Chairman, and which took effect January first, eighteen hundred and ninety-three, to which said classification reference is hereby made; *provided, however*, that no rule or rules governing said Western Classification providing for any change, modifications, or additions to the classifications mentioned in this distance tariff, shall have any application hereto.

[Here follows table, same as in original Amendment No. 8.]

RULES GOVERNING SHIPMENT OF LIVE STOCK BY THE CARLOAD.

MINIMUM WEIGHTS.—Horses and mules, cattle, hogs, and sheep shall be way-billed at the following minimum weights per car, subject to correction to actual weight at destination, but in no case less than the following minimum weights:

[Here follows table, same as in original Amendment No. 8.]

ADDITIONAL RULES.

1. Railroads shall be considered independently in computing distances; *except, however*, that a system of railroads consisting of leased, operated, or independent roads controlled under a common management, although working under different charters, shall be considered and treated as one road, and the distances shall be computed over the shortest operated line composed of two or more of said roads.

2. When any rate herein named conflicts with the Western Classification aforesaid, this tariff shall govern as to such rate.

3. **MINIMUM CHARGES.**—Single shipments of one or more classes will be charged for at actual weight at tariff rates, subject to a minimum charge of twenty-five cents for the entire consignment, or shipment, for a distance of five hundred miles or less, and fifty cents for all distances over five hundred miles.

PROCEEDINGS.

SACRAMENTO, January 23, 1893.

Proceedings before the Senate Committee on Constitutional Amendments (Senators Earl, Chairman; Carpenter, Hart, Seawell, and Burke), on Constitutional Amendment No. 8, and Senator Gesford's substitute therefor, providing for an amendment to the Constitution, fixing the rates of fares and freights to be charged by railroads of the State of California.

SENATOR GESFORD: Mr. Chairman, and Gentlemen of the Committee: Constitutional Amendment No. 8, which has been printed and which is before you, I will state to the committee, was introduced by myself in the Senate. Since its introduction a substitute has been prepared to that proposed amendment, which I would like to present to the committee and ask the committee to propose it as a substitute for Amendment No. 8—the committee substitute I have here.

CHAIRMAN EARL: Does it vary very materially from the one printed and under consideration? A. Yes, sir. It varies in two or three very material aspects from the one printed and before you.

EARL: If there is no objection on the part of the members of the committee, we will consider the two together to save time, if you will state the material variations in the one you suggest as a substitute.

GESFORD: There is no variation with reference to the repeal of the provisions of the Constitution relating to the Railroad Commission in this printed bill and the committee substitute that I now propose. Sections 1 and 2 of the original bill provide for the repeal of the Railroad Commission, or words to that effect. Section 3 of the proposed substitute provides for the addition of Section 36 to Article IV of the Constitution, reading as follows:

"Section 36. The Legislature shall have the power, and it shall be its duty, to establish rates of charges for the transportation of passengers and freight by all railroads operated in this State, and to enact such laws as may be necessary for the enforcement and carrying into effect of such rates; *provided, however*, that the Legislature shall have no power to prescribe rates of charges for the transportation of passengers to exceed 3 cents per mile; *and provided further*, that the Legislature shall have no power to prescribe rates of charges for the transportation of freight to exceed the rates specified by the 'California Distance Tariff,' as in this section hereinafter set forth. Until the Legislature shall prescribe such rates as aforesaid, or in the event that any such prescribed rates shall from any cause become inoperative, the rates of charges for the transportation of passengers on all railroads in this State shall be not to exceed 2 cents per mile, and the rates of charges for the transportation of freight by any such railroads shall be not to exceed the rates specified in the following distance tariff, hereby designated as the 'California Distance Tariff.'"

The California Distance Tariff, as embodied in this proposed committee substitute, is the same as the one in the original proposed amendment. I will state to the committee that Mr. Godchaux, in the Assembly, has introduced a bill which is a counterpart of this one, and now proposed as a committee substitute. I think that bill is printed, and probably we had better get some copies of that, if your clerk will do it. [The clerk was here directed to procure some copies of Assembly Constitutional Amendment No. 14, but was unable to obtain them.]

GESFORD: The California Distance Tariffs, as embodied in both of these amendments—the original and the one I now propose as a substitute—are identical, excepting the phraseology at the head of each table has been changed somewhat, making it a little plainer. That is all. There is no material change in the schedule at all. Then, in addition to that, in this proposed committee substitute there is embodied an article providing for the submission of the amendment to the people for ratification, provided that it shall be submitted on the 18th day of April, 1893.

EARL: That is in addition to what is embodied in the original amendment? A. Yes, sir. But the only question that arises in reference to it is whether or not it can be placed in the same amendment as the provision for submission to the people—whether that should not be done by a separate Act. I think we had better leave that matter until after discussion of the other provisions of the amendment.

EARL: We will be pleased to hear now, on the point of facts upon which this proposed amendment is based. I understand it is based on substantially the same grounds as the other.

GESFORD: Mr. Leeds is here, and I think he also represents the Traffic Association.

EARL: Mr. Leeds, we will be pleased to hear from you.

MR. LEEDS: The first proviso of the bill in reference is for the amendment of the Constitution by the abrogation of Sections 22 and 23 of Article XII, removing the present Board of Railroad Commissioners, and abolishing that portion of the Constitution which provides for them. I do not know as it is necessary to discuss that proposition, as I believe the State is generally conceded to be in favor of that portion of the proposition. With reference to the figures of the tariff, I will say that they are made upon the usual basis, as far as rating by distances is concerned, as in effect in other parts of the country where a distance tariff is in use. I have before me Wisconsin, Nebraska, and Kansas, all of which are made up by graduations of five miles for the shorter distances and upwards. I have examined pretty carefully the situation in California, and this tariff here is based upon what, in my judgment, would yield a reasonable revenue to the principal roads of California. The shorter distances in this tariff are based according to the present figures charged by the roads in the State, recognizing no distance, however, less than five miles; carrying the rate then, at 15 cents per ton per mile, for twenty miles; after that, basing it as nearly as practicable on what are the earnings to-day upon roads in Kansas. It differs somewhat from the distance tariff of roads in that State, from the fact that, after three hundred miles is reached there, the advance, after three hundred, four hundred, or five hundred miles, is greater than it is for a shorter distance, but the tariff would give, in my judgment, on all the tonnage, about what a like tonnage would yield under the tariff

at present in effect in that State. As near as I can estimate, the reduction from the Southern Pacific tariff in the State of California will amount to from 25 to 30 per cent. Considering the earnings of that company—from what I can determine they are from their own figures—within the State of California, it seems to me that would not be an unreasonable proposition.

Q. Have you examined the earnings of the San Francisco and North Pacific Railway? A. I have not examined the earnings of any road in California but the Southern Pacific Company; in fact, I have not the data from which to obtain the information.

Q. The data you base this on, then, is derived from the Southern Pacific Company alone. It is what you estimate the cost of transportation, cost of the road, etc.? A. So far as the data is concerned, it is what I obtained in reference to the Southern Pacific Company's business.

Q. Mr. Leeds, now, you said this would yield, you thought, a fair revenue to the roads affected by the figures, or all the roads in the State. How do you arrive at your calculations? What percentages have you taken and what percentage would it yield to the Southern Pacific road? What earning to the Southern Pacific? A. I say that I believe it will reduce their earnings on local traffic 25 to 30 per cent. Their local traffic, according to their own figures, amounts to something like 80 per cent. Taking 80 per cent as a basis, and take 30 per cent of that, the reduction would be 24 per cent of the gross earnings.

Q. Have you attempted to ascertain what the net revenue would be to the roads affected, the Southern Pacific Company for instance? Have you taken what would be netted to them by the proposed California Distance Tariff under the operation of this amendment, taking the present tonnage and traffic into consideration? A. I do not know as I get the drift of your question.

Q. What I say is this: Say the existing rates of the Southern Pacific are reduced 25 to 30 per cent, approximately. Well, now, what profit is left them in the operating of their road; have you ascertained that point? A. According to their own figures, their operating expenses for the Pacific System is 59 per cent of their gross earnings.

Q. What is meant by the Pacific System lines? A. The Pacific System of that road comprises the lines, I believe, this side of El Paso, Texas, and thence to Ogden, Utah, and Portland, Oregon.

Q. That percentage does not include all expenses; that does not include bonded indebtedness—interest and bonded indebtedness? A. No, sir.

Q. Do you know what the interest account is annually—the interest charge? A. On the Pacific System? Yes, sir; I have the memoranda here, somewhere, if you will wait a minute.

Q. I would like to have you elaborate on that matter as much as you can. A. The interest on their bonded indebtedness, as reported for the Pacific System, is \$8,675,587 42. I will say for your information that the figures which I have with reference to the Southern Pacific Company are one year old. This indebtedness represents a capital, at 6 per cent interest, of \$144,593,124.

Q. What do you mean by capitalization? A. The mortgaged indebtedness. This is on the mileage of the Pacific System, some four thousand odd miles. I will give you the mileage in a minute. It is four thousand seven hundred and eleven miles.

Q. Have you figures there to show the gross earnings? A. The gross earnings of the Pacific System were \$37,010,078 16. I separated from that as far as I could the mileage outside of California, being obliged to consider entire the mileage of the Central Pacific system, making a mileage of three thousand four hundred and ninety-eight miles in the State of California, and, including the Central Pacific outside of California. I find the earnings on that would have been \$31,555,716 05, or \$9,021 07 per mile per annum; while, for the portion of the system outside of the State, the amount was \$4,496 50.

Q. Aggregating about \$6,000,000 of the total of \$37,000,000? A. \$5,454,362 11. The gross earnings per mile on the entire Pacific System were \$8,002 and some cents.

Q. In your computations, did you consider the interest on the cost of operating the road, in addition to the cost of the road? A. Other roads pay their interest and fixed charges with a less net earning. I have some comparisons, if you please, with one or two other lines. I happen to have the reports, and find that the earnings of the Missouri Pacific system for the same period were \$4,965 81 per mile—a little over one half—and that they consumed 70.96 per cent, or nearly 71 per cent, of their gross earnings in the operation of the road. I also find that the Atchison, Topeka and Santa Fe consume 69.19 per cent of their operating expenses, and their gross earnings per mile are \$5,142 57. I also find that, in connection with the operation of their road, they run 26.12 miles to the ton of coal, while, on the Southern Pacific, in California, or the Southern Pacific System lines, run 29½ miles to the ton. I also find that the Southern Pacific consume, per mile run for locomotives, 56 pounds of coal, while the Atchison consume 108; that this 56 pounds of coal carried 6 tons per train more than the 108 tons of the other road.

Q. What is the cost of this coal? A. It is set down here for the Southern Pacific at \$5 79 per ton, and for the Atchison at \$2 11. I think there is a difference in the matter of transportation helping to make this, but I am not sure about that. I think there is. I also find that the percentage of empty to loaded cars carried by the Southern Pacific Company was 24.79 per cent and the Atchison 28.32 per cent. Taking the price of coal on other roads, I find that the Southern Pacific Company's coal costs them 8.9 per cent of their operating expenses; the Atchison, 7.8 per cent, or 1.1 per cent difference. I find that the average haul on through freight is 906 miles, and the rate received \$10 79 a ton; on local business 101 miles, and the rate per ton \$2 74; the aggregate haul, 206 miles, and the aggregate receipts \$3 78. The rate per ton per mile on through was 1.119 cents; on local, 2.699 cents—practically 2.7 cents; on all freight, 1.835 cents; that the local rate was 226.6 per cent of the through.

Q. I do not understand your statement. A. Two and one fourth times as much per ton per mile as the through traffic over the same lines. The tons of freight per train for the Southern Pacific were 124.63; on the Atchison, Topeka, and Santa Fe, 118.84—a difference of 5.79, or 6 tons.

Q. What is the proportion of passengers per mile of road? A. Judging from the earnings here, I should say there is more traffic per mile of road than there is on the lines of which I have spoken.

Q. Than the Atchison? A. Yes.

Q. The Missouri Pacific? A. I think there is more.

Q. This table set forth here, called a distance tariff, like the one in Kansas, is based on the Atchison system you have given figures for, is it not? A. It is based on their tariff. They make tariffs over there which are really less than shown in the distance table. There is a series of distance tariffs. In fact, each State or Territory has, as a general thing, east of the Rocky Mountains, a distance tariff which is peculiar to that particular State. It forms a basis for the local tariff generally, in the State or Territory, and differs somewhat. There is one in Illinois, one in Wisconsin, Iowa, Minnesota, the Dakotas, Nebraska, Kansas; and, in fact, as far as my knowledge extends, there is a distance tariff in effect in each of the States and territories.

Q. What basis would you take to arrive at this tariff. Do you consider that the carrier is entitled to interest on the cost of carriage—of operating expenses, and also interest on the cost of the road. Do you take those two elements into consideration? A. Yes, and you are paying a good deal more than that in California. You are considering rates which, as I understand them, are within the limits of California alone. I am endeavoring to show by these figures that the earnings are \$9,020 per mile of road—and, in fact, taking out that portion of the Central Pacific in Nevada, you are paying at least \$10,000 a mile annually to the Southern Pacific Company for transportation over every mile of road they have in the State; for operating expenses, at 59 per cent, they would pay \$5,900, leaving at least \$4,100 to pay fixed charges on the road in this State.

Q. The total capitalization you state is \$144,000,000 for the Pacific System, so called. What portion of this is in California? A. I have not the material to segregate it.

Q. I understand this proposed amendment is put forth largely under the auspices of the Traffic Association, in San Francisco? A. Yes, sir.

Q. We would like a statement as explicit as you are able to give us of all the facts taken into consideration in making up this California Distance Tariff—just as full as you can. A. The operations, earnings per mile of road, the comparison of operating expenses, the information that California is paying to this road about twice or more than twice as much per mile as is earned by roads in other portions of this country; also, the proposition that it is no more expensive here to operate a road, or should not be, than in that territory, should be quite sufficient, it strikes me, and demonstrates the necessity for some reduction. It has been insisted upon that this system shall be considered as a whole, including Oregon, Arizona, New Mexico, and Texas; but I claim, and the Supreme Court of the United States has held, I believe, that in the matter of local commerce, each State is an integral part by itself, and such State has a power to fix the rates on all State business. Interstate commerce is a subject over which the States have no jurisdiction; that belongs exclusively to the Federal Government. You must not call upon California to support a business in another State or Territory. As soon as the road passes over the line of your State, you have nothing more to say with reference to the traffic which they carry, and all responsibility as to their earnings or losses, so far as you are concerned, ceases. Whenever a system of this kind is set up, it seems to me that is contrary to the principles of justice and equity. I will say for

your information that such claims were set up in Kansas and Iowa, and they were thrust aside by the Commission, and they were sustained.

Q. By the Courts? A. No, sir; sustained by the people, and the rates prescribed by the Commission were put into effect. Yes; I think they were sustained by the Courts.

Q. They were? A. By the Courts.

Q. Have you the citations here? A. No, sir; I believe I can get them, though. They claim that the operating expenses are higher here than in the East, owing to the high price of coal. I believe I have shown that one half the amount of coal here provides the same service as in Kansas.

Q. How can that be; are not the grades here heavier? A. I think, perhaps, there is not more than 10 per cent of the local traffic of this State that moves over the heavy grades. Furthermore, the equable climate here, I should say, would enable the performance of more service with a ton of coal than in the colder countries East. In the warm weather here an engine should do nearly double the service that it would East over the same kind of track. In fact, that seems to be borne out by the fact that only about one half the amount of coal is used here for the movement of a train of 5.79 more tons than in that territory. There is another fact that is worthy of consideration. You have very little stone ballast here in your roads, and very little is required. Your soil is better adapted to making a roadway, I should think, than that East, and besides there are nine months you have no elements to contend against, and in the other three there is very little storm and interruption. Where they are obliged to have stone ballast in the road it requires the service of a section man, I believe, per day, to take out and put in three ties in a rock-ballasted road. Besides, you have here a tie that lasts two or three times as long as ties east of the Rocky Mountains, and less ties are to be taken out and put in. When your ties are worn out for track purposes it makes a good fence post, while over there when worn out in the track it is rotten and gone.

Q. Some of the committee would like to hear further from you on this subject; whether the California Distance Tariff here will pay the operating expenses, say for the Southern Pacific road, and interest on bonded indebtedness, and leave a reasonable profit for the operation of the line. Are you able to give us an answer to that? A. I think it would be a pretty good plan, perhaps, to determine what the fixed charges are; whether the bonds are not largely in excess of any original cost of the property; whether the capital stock of the road cost anything or not; whether or not you are being called upon to-day to pay a large amount of money on something that never had any tangible existence. My calculations are based upon a comparison of what has been done, and found more than sufficient, in other and less favored portions of the country, to accomplish the same thing. I do not admit that the cost of operation in the State of California will be 59 per cent. In fact, I have a little comparison here which may shed some light on that subject, which I have overlooked. I will mention it. The Southern Pacific Railroad of California earns in gross \$9,279,822 50, or \$6,611 54 per mile, and the operating expenses were 58.50 per cent. The South Pacific Coast earned \$1,107,772 87, or \$10,651 66 per mile, and 64.46 per cent for operating expenses. This was probably to largely rebuild the road during that time, which should have been

obviated by building it properly in the first place. The California Pacific earned \$1,528,047, or \$13,242 79 a mile, and the operating expenses were 50.31 per cent. This road runs from Vallejo to Sacramento.

Q. That was during the year 1891? A. Yes, sir.

Q. Then the interest and bonded indebtedness is not included in the operating expenses, Mr. Leeds? A. No, sir.

Q. Do you know whether or not the bonds passed into the hands of interested parties? Do you know anything about the disposal of those bonds? A. No, sir.

Q. Do you know what the roads are bonded for in California? A. No; but it would not take a great while to find it out.

Q. Your suggestion is, that the bonded indebtedness of this road is very much in excess of the cost of construction? A. Yes, sir; I believe it is.

Q. What would be the effect, Mr. Leeds, if you could answer, of the adoption of this statutory amendment upon the independent lines of road in this State, other than the Southern Pacific? A. I think some of those roads are earning to-day \$6,000 and more per mile, and they should stand it as well as the other road can. I believe they could stand it, and believe the tariff would be its own compensation; believe it would operate to increase the business.

Q. Do you think that the independent lines of road you refer to would be able to operate at a profit—at a reasonable, fair profit? A. As far as my experience has extended in the application of uniform tariffs in other portions of our country, the roads have continued to operate. They do not all operate at a profit in any State. People make bad investments in railroads as well as other things. I do not think there is a State in the Union where every road operates at a profit.

Q. As a general proposition, rates fixed by the State must be reasonable with reference to the cost of construction and the cost of operating the road; such a rate as would yield over operating expenses, etc., a reasonable interest on the cost of construction? A. As a general proposition, I believe they should make a profit over operating expenses and interest on bonds.

Q. We understand you to say that you do not know the cost of these roads in the State of California? A. No; but I have seen some estimates made by competent engineers with reference to the building of roads in California.

Q. At the time these were built? A. No, sir; at the present time. On the basis of present prices for material and labor—the expense of reproducing these roads at the present time.

Q. You have no idea what the original investment was? A. I know nothing of that.

Q. We understand you to say that you made estimates from which you come to the conclusion that the Southern Pacific had been bonded for about all of its original cost? A. The estimates are for the construction of a road at the present time. For what they could be reproduced at the present time.

Q. Do you know how many roads there are, independently of the Southern Pacific, in this State? A. I do not know as I do; I do not believe I could recall them, although I have seen the names.

EARL: At this rate of 2 cents a mile for passengers, prescribed in this

proposed amendment—2 cents a mile, I understand, until the Legislature should act, when 3 cents is the maximum. Is that a reasonable rate?

LEEDS: Until the Legislature acts, the passenger rates shall be 2 cents; the maximum fixed by the Legislature is 3 cents.

Q. How did you arrive at that figure? A. That figure is more of a proviso than anything else; to induce the making of a rate on passenger business by the Legislature.

Q. You say that is a just and reasonable rate for the carriage of passengers? A. It is a lower rate than is made on some other roads in the country and in other territories. The usual rate is 3 cents a mile; that is the usual rate.

Q. That is the usual rate, say on the Atchison road? A. Yes, sir.

Q. And on the Missouri Pacific? A. Yes, sir.

Q. Is that the general rate, 3 cents? A. Yes sir; 2 and 3 cents are the pretty general rates in the East. There are more places where the rate is 3 cents than any other. The almost universal rate is 3 cents.

Q. Three cents is the almost universal rate? A. Yes, sir.

Q. Then, you mean to say that 2 cents is a just and reasonable rate for the carriage of passengers in this State, from your investigations? Is that so? A. I told you what my investigation was.

LEEDS: Counting the entire business of the Southern Pacific Company, I find they report their passenger business as being done at 2.16 per mile; segregating their ferry and suburban business and through business, I find 2.73, or say 2½ cents per mile. Taking the business, excluding suburban and ferry business, it is 2.499 cents. The Atchison, Topeka, and Santa Fe business, covering the same class, would be 2.388, or .111 cents less. I do not know as I care very much what the passenger rate is. It amounts to very little of the burden, anyhow, whether it is 2 or 3 cents. Three cents is enough, and may be too little; I don't know.

EARL: What do you mean by saying that the passenger rates is very little of the burden? A. It only amounts, outside of the suburban business, to less than 30 per cent of the gross earnings.

Q. Not one third of the profit—that is, you mean suburban and other business excepted. How much would that amount to? A. Something like a third; whatever rates are made would not disturb them, because they carry their ferry and suburban business at about 1 cent per mile. This amounted in 1891, as near as I can figure it, to \$1,121,754 25; they carried 11,845,443 suburban and ferry passengers; the average distance was 9.6 miles, about. The average rate per passenger, 9.47 cents. The intention of reducing the passenger rates is to increase the business.

Q. The bill provides here that a rate of 2 cents shall be imposed until the Legislature shall make a higher rate, and whenever the Legislature has made a rate, which from any cause becomes inoperative, 3 cents per mile will apply. According to the statement, Mr. Leeds, the rate of 2 cents per mile seems to be at least 16 per cent less than the average rate now charged? A. The proviso to make that 3 cents per mile was put in, perhaps, on account of some doubt, and it might be found reasonable to make that rate—to advance the rate to 3 cents.

Q. You think that the rates fixed in this proposed amendment here will encourage, or do you think it will discourage the building of roads,

that is, competing roads? A. I don't believe it would discourage the building of competing lines in this State. That has not been the history of other States where such legislation has taken place. The best equipped States of the country to-day are those where the largest amount of mileage has been added in the last two or three years, or in years during which the legislation took place. Take for example the States of Illinois, Wisconsin, Minnesota, Iowa, Nebraska, and Kansas. In all of those States there has been what railroads term "adverse legislation." They are all of them to-day pretty well equipped with railroad facilities.

Q. Do you know whether these roads are operated with a profit or not? A. Many of them are, yes.

Q. This California Distance Tariff, "Western Classification."

[The Chairman then read from the proposed amendment, wherein it is stated that the distance tariff applies to all roads built now or to be built hereafter in the State of California; shall be subject to the "Western Classification" and the "rates" governing the same.]

LEEDS (interposing): It should read "rules" instead of "rates."

[Chairman instructed Senator Gesford accordingly.]

THE CHAIRMAN (continuing): The "Western Classification," issued January 1, 1893, said classification being made part of this distance tariff, and to all intents and purposes as if same were actually incorporated herein. What is that Western Classification, Mr. Leeds? A. The "Western Classification" is a classification of goods for shipment which is in effect in all territory east of California and west of Chicago and the Mississippi River.

Q. Is it in effect in any portion of the State of Nevada? A. I believe it is. I know it is in effect with reference to interchange of business with connecting lines; with reference to local traffic between points in that State, I am not positive. It is also in effect in Southern California. I don't know where the dividing point is, but I think it is at Mojave. It is also in effect in this part of California, and business which is consigned through to a point beyond what is known as the terminal, when coming from points east of the connecting points with a connecting line. I don't know exactly the definition put on the tariff, but I believe that is the application of it; anyway, it is interchange business, and applies on shipments which might come to Sacramento, and then going to outlying points.

Q. What is this "committee;" who are they, and how are they made up? A. That committee is composed of representatives of each road named under the classification; they are seventy-four in number.

Q. Is the Southern Pacific one? A. The Southern Pacific is one. They got two members on the committee for their Atlantic System and the Pacific System.

Q. How many are there in the committee? A. The Southern Pacific count two in the committee, but there are seventy-four members on the committee. Their business is largely done by the sub-committee, which meets one or two days before the full committee come together, and passes on many articles which come up for consideration, and its recommendations are acted upon by the full committee.

Q. How many are there in the sub-committee? A. I don't know to-day how many. There used to be seven, I believe. I was a member at one time.

Q. This classification, is it in book form; is it published? A. Yes, sir. [The Chairman, on inquiring for a copy, was informed by Mr. Gesford and also by Mr. Leeds that a copy had been submitted, and they would furnish others.]

Q. Are the rules governing the same in this book? A. Yes; it is complete in itself.

Q. In a general way, Mr. Leeds, is it a classification of all commodities shipped—all commodities of trade? A. Yes, sir; it is a very full classification. It has been the work of ten years in preparation. The committee first organized in 1883, and it has been revised and added to and carefully compiled—I should say by as good talent as there is in the country anywhere—and after very full consideration of most of the items of the classification as between the members of the committee and the shipping public.

Q. Now, are these classifications rigid or are they fixed. Suppose some new commodity comes in the market—something new, unlisted in the classification? A. That would naturally come up at the next meeting of the Classification Committee, and in the meantime would be passed upon by the Chairman of the Classification Committee.

Q. And would he list it? A. He would send out notices, I believe, with his ruling on it, whatever it might be.

Q. Does he exercise this power in the rules referred to, the rules regulating and governing the Western Classification? A. There is a rule which gives him that authority; yes, sir.

Q. Then the classifications contained in this Western Classification would not be a fixed and rigid thing, but would change, possibly? A. Quite likely.

Q. Taking new commodities that arise? A. (Interrupting.) You can't provide the new commodities in advance in any event.

Q. That is exactly what I thought. You can't provide in advance for them, and if they should come into existence, the Western Classification as it exists to-day, or when it went into effect, January 1, 1893, would not determine what class it would go in, but it would be classified by the committee that might sit at the next session, and in the meantime the Chairman might make a ruling, you say, classifying it? A. Yes, sir.

Q. That would be changing the classification? A. Oh, no; the classification is specific within itself to-day.

Q. But take a new commodity, something like telephones, or some new things introduced, some new matter, how would they be listed, say in the Western Classification, so called? A. They would naturally be listed as they would be if no such proviso that we were talking here about were in existence.

Q. Do I understand you to say by that, that we do not adopt the rules of the Western Classification? A. You may adopt that rule, as far as I can see, and yet be consistent.

Q. But if the Chairman was to rule on this new commodity, or commodities, my point is this: If he were to rule, or make a rule as he is empowered under this Western Classification here, he would be doing something that is now new in this Western Classification, which is complete in itself. Suppose this amendment was adopted and inserted in the Constitution, that would be a final and complete classification, and the Constitution would have to be changed whenever the Chairman

made a ruling, as he is empowered to do from time to time? A. Drop that rule. Then you want to know what you would do if you were making a tariff to-day, making a constitutional proviso. I only answer the question by asking another one, to show you that you can't provide for something that don't exist to-day.

Q. But it is attempted here. Is it not the thought of the drafter of this that rulings of the Chairman of the Western Classification Committee, for instance, and his committee should be a part of our Constitution from time to time? A. You provide there that you shall do with this committee precisely what he will do with it anyhow, and precisely what the parties affected by this tariff would do if that rule were entirely left out from this constitutional proviso.

Q. If this rule, that we have been speaking about, becomes part of our Constitution, was adopted April 18th, as I understand it here; if the proposition was adopted, then the Constitution would be changed from time to time as these rules? A. No, because it is not part of the Constitution. That which he does afterward is not a part of the Constitution—would not be a part of any Constitution.

Q. How would the new commodities be classified? Supposing one came into existence, how would they be classified by this particular classification covering, say three thousand commodities? There is a development, and in the course of time new commodities spring into existence. How are they to be classified? Who would classify them? Suppose you adopt a tariff and classification. You do it as a specific proposition? Well, how would you classify the new commodities? A. Why, classify as you do with the others, as they come up. It need not be a part of your Constitution, so far as I can see.

Q. This Western Classification would be a part and portion of our Constitution, fixed and rigid. A. Does it become a part of the Constitution?

Q. Yes, sir: A. It becomes a part of the tariff.

Q. The tariff becomes part of the Constitution, because it is all set forth; and we are all impressed here that this classification, being made part of this distance tariff, as if the same were actually incorporated in it, is a part of the amendment, as proposed. A. I am not a constitutional lawyer, but I should say that you can refer to that tariff, or that classification in the tariff, as you might refer to Webster's dictionary, or any other standard publication, and yet not make it a part of the Constitution.

[The Chairman then read portions of the proposed amendment, wherein it was stated that the distance tariff and classification, as he understood it, was to be made part of said amendment.]

[Mr. Leeds, however, could not agree with him on this point.]

EARL: I understood the table set forth, together with all the figures, became a part of our organic law, together with the Western Classification.

LEEDS: That is not my theory. It is a specific publication, readily referred to and understood, and it is not necessary it should become part of the Constitution any more than any other publication referred to should become a part of it.

EARL: It is not only my impression, but the impression of every member of the committee, that the classification, together with the rules and also the tariff and tables set forth herein, were to become part of our Constitution, to all intents and purposes.

LEEDS: They were put in for the purpose of saving time. It is not my idea that they were to become a part of the Constitution.

EARL: What is your idea as to how much should be inserted as a part of the Constitution?

LEEDS: Only the table of figures in reference to the classification. The classification is a publication, easily set forth and referred to, as any standard publication.

[In conferring with the other members of the committee, their impression was the same as that of the Chairman (Mr. Earl), viz.: That the classification would become part of the amendment to the Constitution; and, instead of being the rigid and fixed thing, would shift from time to time, according to the rules laid down by the Chairman.]

GESFORD: The words "after January 1, 1893," should be stricken out, and also an exception made as to the rules giving the Chairman power to classify new commodities.

EARL: Under those rules of the classification, does the Chairman, Mr. Leeds, of that committee have the right to reclassify articles in there already? A. No, sir; not to make changes without the vote of all the members of the committee. As I understand it, they meet about once a year.

Q. Why are these powers given to the committee, to reclassify articles from time to time in case of emergency, or as the trade demands? A. There have been such things recognized in connection with the classification, and many changes have been made. There was an effort made some three years ago to make a uniform classification of the United States, but it fell through. It was impossible to reconcile the differences between the trunk lines east of Chicago and the Mississippi River, and the lines west thereof. But there was a disposition, however, to make as many articles as were consistent, uniform with the trunk line, or what is known as the "Official Classification," and thereby facilitate the interchange of business between the roads which use the two classifications, "Official" and "Western." Uniformity is a very desirable thing to have in the interchange of traffic between roads, and in that way there was some last year. I think in 1891 a good many changes were made. Very frequently the trades people come before this committee with propositions to be made in classification, to assist in furthering their interests on certain articles, when it is determined, if desirable to do so, to make the change.

Q. Then your idea is that the same necessity would apply on the lines here in California, would it not? A. Yes, sir.

EARL: I think the classification would become part of our Constitution. Now, suppose it is necessary to the demands of trade that these matters which are controlled under the Western Classification come into play here, and this amendment were adopted. There being no committee, would not the vote of the people of the State of California upon their proposed amendment be necessary to make the change in the classification? In other words, the only way I can see is for the adoption of the resolution to pass both houses of the Legislature by a two-thirds vote, and the submission of the proposition to the people, when, if it receives a majority vote, the proposition is accepted and becomes part of our organic law; while according to the scheme modified by yourself and Senator Gesford, the scheme would become a fixed and rigid one. The power of a classification committee and the Chairman thereof to

classify articles as they are now or may be to-day under the rules governing this committee would be eliminated from this constitutional amendment here. The constitutional amendment would be fixed and rigid, and the classification would never be changed or modified. There would be no power to change it as the demands of trade would require. There would be no power excepting the Legislature and submission to the people.

LEEDS: The first paragraph of Section 36, making it the duty of the Legislature at the first regular session after the adoption of the amendment to prescribe rates of fares for passengers, and provide classification of property, and to fix and determine the rates of freight that were charged on all railroads in the State of California, covers the point.

EARL: I do not think it is just or fair to have to wait the convening of the Legislature before the classification could be changed, in order to meet the exigencies of trade and commerce.

LEEDS: It will be a vast improvement on what we have at present if we only had the classification changed once in two years. I do not think the classification has been changed in ten years; that rates and fares could not very well be provided without a governing classification, which need not necessarily be the Western Classification. It is not the intention of the bill, so far as my idea is concerned, to make the classification part of the Constitution.

CARPENTER: I see very little use sitting here with a bill that can only be read by one member of the committee at a time, and discussing this question. I don't think it is parliamentary or right to send the bill here in that shape. I move this bill be referred to the Assembly, with the request to have it printed and recommitted.

LEEDS (interrupting): I don't think it is necessary to waste time about that. This tariff and classification are only calculated to afford relief in the interim, until the Legislature can act upon that question. There is certainly no such idea connected with the bill there, as to fix the rigid classification in the Constitution of this State, or even a rigid schedule of rates.

CARPENTER: It may be a waste of time, according to the idea of Mr. Leeds. I don't propose to go into argument of the question with Mr. Leeds, or anybody else, and want to know what we are doing on a question delivered to us in that form. The Chairman don't agree with Mr. Leeds, and it seems the distinguished Senator who introduced the bill don't agree with him, and I want a printed bill.

EARL: Mr. Gesford asked the indulgence of the committee for having the bill in this form, which was granted.

CARPENTER: Well, I insist that the bill should be reported back to the Assembly, to be printed and recommitted.

EARL: The bill should be printed, and will be sent back, and the committee will proceed with its other business. I understand there are a number of representatives of railroads present, some of whom were anxious to get away to-night and wish to be heard.

JUDGE MARTIN: I would suggest that the same difficulty which has confronted the committee as to a proper understanding of the amendment would confront the gentlemen representing the railroads also, and therefore if we could have this reported back, the gentlemen representing the railroads would take this subject up with the committee at some

future time. The matter is one of vast importance to the railroads, and I do not see how any gentleman could properly understand the details proposed in the amendments until we get copies of it. It would only be a waste of time to consider it further at present.

[Some of the gentlemen present had to go away immediately, and it was understood the bill would not be reported back before at least Wednesday.]

EARL: The meeting will stand adjourned to Wednesday evening, at 7:30 o'clock.

JANUARY 25, 1893.

Meeting called to order at 7:30 P. M.

MR. EARL: All the committee are present except Senator Carpenter. The matter that the committee will take up and consider this evening will be the Committee Substitute for Senate Constitutional Amendment No. 8, so entitled; the same proposition that was being considered last Monday evening. The oral amendments are now incorporated in this printed resolution. We will be glad to hear from Senator Gesford.

SENATOR GESFORD: Mr. Chairman and Gentlemen of the Committee—You have before you the proposed Committee Substitute for Senate Constitutional Amendment No. 8, which embodies the one that I proposed at the last sitting of the committee, together with some amendments that were suggested at that time, and one or two additional. You will notice that the resolution, after providing for the repeal of Section 22 of Article XII of the Constitution, provides for an additional section, 36, to Article IV, and that I may be understood in what little I have to say, I will read the section:

"The Legislature shall have the power, and it shall be its duty, to establish rates of charges for the transportation of passengers and freight by all railroads operated in this State, and to enact such laws as may be necessary for the enforcement and carrying into effect of such rates."

As to this clause in the section, the committee will observe the Legislature have the power, it is their duty, to establish rates on all roads in the State; that is, the general proposition that, in lieu of the Railroad Commission having this power, in lieu of the establishment of freights and fares by a Railroad Commission, that power is given to the Legislature.

(Continuing to read):

"Provided, however, that the Legislature shall have no power to prescribe rates of charges for the transportation of passengers on any railroad, or system of railroads, whose gross annual earnings are more than \$4,000 a mile, to exceed 3 cents per mile."

It was suggested at the last sitting of the committee, and upon further investigation and more deliberate examination, it has been ascertained that there are a number of roads in this State, small roads, that could not be operated with the same tariff, to net a profit, as the larger roads; and in order to provide a clause it has been thought advisable to classify the roads into two classes: Those whose annual gross earnings are less than \$4,000 per mile, and those whose gross annual earnings are more than \$4,000 per mile; so that, so far as this clause of the amendment is concerned, these small roads will not be burdened, or injured, or prejudiced by the rate that the larger roads can operate under.

(Continuing to read):

"And provided further, that the Legislature shall have no power to prescribe the rates of charges for the transportation of freight on any railroad or system of railroads whose gross annual earnings are more than \$4,000 a mile, to exceed the rates specified in the 'California Distance Tariff,' as in this section hereinafter set forth. Until the Legislature shall prescribe such rates as aforesaid, or in the event that any such prescribed rates shall, from any cause, become inoperative, the rates of charges for the transportation of passengers on all railroads in this State whose gross annual earnings are more than \$4,000 a mile, shall be 3 cents per mile, and the charges for the transportation of freight by any such railroads shall be the rates specified in the following distance tariff, hereby designated as the 'California Distance Tariff,' to wit."

The same classification being made with reference to freight schedule as to passenger. And you will also notice the 2 cent proposition has been eliminated. Upon further investigation, and after considering the matter more fully and carefully, it has been deemed advisable to incorporate 3 cents instead of 2 cents; the 3 cent rate being an almost universal rate, it being the opinion of the gentleman who investigated this that a 3 cent rate is a fair and reasonable rate.

(Continuing to read):

"Until the Legislature shall prescribe such rates as aforesaid, or in the event that any such prescribed rates shall from any cause become inoperative, the rates of charges for the transportation of passengers on all railroads in this State whose gross annual earnings are more than \$4,000 per mile, shall be 3 cents per mile, and the charges for transportation of freight by any such railroads shall be the rates specified in the following distance tariff, hereby designated as the 'California Distance Tariff.'"

Now, gentlemen, there is one amendment that I desire to make to this bill, and to present to the committee and ask them if they pass upon the bill favorably: That after the word "mile" on line seventeen, in order to have some fixed manner to determine what the "gross earnings" of a railroad are, these words be incorporated, namely: "As shown by the Thirteenth Annual Report of the Board of Railroad Commissioners of the State of California," making that provision read then as follows:

"Until the Legislature shall prescribe such rates as aforesaid, or in the event that any such prescribed rates shall from any cause become inoperative, the rates of charges for the transportation of passengers on all railroads in this State, whose gross annual earnings are more than \$4,000 per mile, as shown by the Thirteenth Annual Report of the Board of Railroad Commissioners, shall be 3 cents per mile, and the charges for the transportation of freight by any such railroads shall be the rates specified in the following distance tariff, hereby designated as the 'California Distance Tariff.'"

Now, the committee should bear in mind this proposition: This Legislature can fix no schedule of freights and fares, that power being delegated alone to the Railroad Commission, and until the Railroad Commission is abolished, until those provisions of the Constitution are abrogated, the Legislature will have no control over the establishment of freights and fares, so that this bill proposes now: *First*—To abolish the Railroad Commission, to wipe it out, and provide, in the interim, a

schedule of freights and fares; in other words, if this amendment to the Constitution should go into effect, say on the first day of July, 1893, then from that time until the Legislature shall have fixed a schedule of freights and fares, the rates provided in this amendment would govern until that time; in other words, it is intended only as a provision to bridge over the interim between the time the amendment shall have gone into effect and until the time the Legislature shall have established the rates of freights and fares.

(Continuing to read):

"CALIFORNIA DISTANCE TARIFF.—This distance tariff shall be applicable to local traffic between all stations in the State of California now established, or that may hereafter be established. The classifications of property provided for in this distance tariff are based upon the 'Western Classifications' and the rules governing the same adopted and issued by the Western Classification Committee, of which J. T. Ripley was Chairman, and which took effect January 1, 1893, to which said classification reference is hereby made."

The objection was made that that classification, in the manner in which it was incorporated in the bill, would become a variable classification—that is, it would be subject to change by the Chairman of the railroads composing that Classification Committee, and therefore it would not be a fixed and determined classification. Now, the idea is not to incorporate that classification into this amendment, but simply to refer to it as a basis upon which this California Distance Tariff is based.

(Continuing to read):

"*Provided, however,* that no rule or rules governing such classification providing for any change, modifications, or additions to the classifications mentioned in this distance tariff shall have any application hereto."

In other words, that this Western Classification is fixed, determined, invariable; and if adopted—if this distance tariff is adopted by us—I think there will be a provision of the Constitution subject to no change. Of course it will be argued—and I do not claim to be a railroad expert; don't claim to be an expert on freights and fares; claim to know very little about them—I don't pretend to be an expert, as I say, but I have undertaken to assist in this bill to the best of my ability, and I have presented it here on behalf of the Traffic Association. If there are defects in it, it is for this committee to remedy those defects. I contend the people are looking for some relief in this matter. I am not one of those so-called "anti-railroad" fellows; I am not one of those fellows who believe that in order to gain notoriety it is necessary to burn railroad bridges and destroy railroad property; I am not made out of that kind of material. I believe in a fair and honest adjustment of this question. I don't believe in this demagoguery. I don't believe in this howling about corporations and railroads for the purpose of creating sentiment against any class of people or property rights. The whole State of California expects the Legislature to do something—they are looking to it to do something. I don't believe the State of California wants to confiscate any property or deprive anybody of their rights. But they simply want us to do that which is for the interests of all parties concerned, and therefore this bill is submitted by me in that spirit, and in that spirit alone.

SEAWELL: Is there any other Constitution that you know of where this maximum rate is embodied in the organic law?

GESFORD: There is no such a provision in any Constitution that I have examined. I know of nothing of this kind having been embodied; it is an innovation; entirely so. We are in this position in this State: if the people will vote for this amendment that we propose to them, abolishing the Railroad Commission, we leave the railroad companies from the time of ratification of that amendment until the time the Legislature is clothed with power to fix rates, to manage and control rates of fares and freights by themselves. This is simply a temporary affair. The Legislatures of other States have done it, and I believe California can do what other States do, and that we can arrive at a proper and a just solution of this question of freights and fares which has troubled us so long, and for all the years we have had railroads in this State. This distance tariff, gentlemen, denominated in this amendment as the "California Distance Tariff," is based on the Western Classification, a classification for property made for the purpose of fixing rates by representatives of seventy-four railroads. This classification is one that has been changed from time to time, and the one referred to here is the one that went into effect January 1, 1893. There are very few changes on staple articles, I imagine, and I believe that no one would suffer by the adoption of the schedule of rates for a short period, until the next Legislature should have provided a different system or different rate. Now as to the question as to whether these rates are equitable or not, Mr. Leeds has told you, and it has not yet been disputed, that this was a reasonable schedule of rates; it was some twenty-two per cent lower than the freight rates established.

LEEDS (correcting): It was 25 or 30 per cent lower than the present tariff of the Southern Pacific; that it applied to probably, within the limits of the State of California, to something like 70 per cent of their business; I should judge, as near as I can calculate, their through business, which would not be disturbed by this tariff, and applying 25 or 30 per cent to 70 per cent, would be 21 or 22 per cent.

GESFORD: It is a material reduction of freight charges now, being a matter of 22, 25, or 30 per cent; it is a material reduction, and a reduction that the railroads can stand; that they can operate at a profit under this reduction. Now, then, if these rates are not equitable and just, with the statement of Mr. Leeds—and I believe it will not be contradicted, he is well posted on the subject of rates of freights—with this proposition before us, if these rates are not fair, it seems to me it is for those who controvert the proposition, to show wherein it will be ruinous or injurious to the freight traffic of the State.

(Continuing to read):

"Rules governing shipment of live stock by the carload," etc.

Then there are some additional rules had to be made for the protection of shipments.

(Continuing to read):

"Railroads shall be considered independently in computing distances; except, however, that a system of railroads consisting of leased, operated, or independent roads controlled under a common management, although working under different charters, shall be considered and treated as one road."

So that there would not be two or three different rates on a system of roads; the rates would follow right along through to the end of the system.

(Continuing to read):

"And the distances shall be computed over the shortest operated line composed of two or more of said roads. Whenever the rate herein named conflicts with the Western Classification aforesaid, this tariff shall govern as to such rate. Single shipments of one or more classes will be charged for at actual weight at tariff rates, subject to a minimum charge of 25 cents for the entire consignment or shipment for a distance of five hundred miles or less, and 50 cents for all distances over five hundred miles."

In other words, the railroads will not be compelled to charge anything less than 25 cents for five hundred miles or less, and 50 cents for over five hundred miles. It seems to me, gentlemen, it is a simple proposition, and the question it seems to me for this Constitutional Amendment Committee to consider is, first, whether or not this plan is feasible; second, whether it is constitutional. If there is any provision that would prohibit the incorporation of a distance tariff of this kind, or system of rates of freight and fares of this kind, it is a question that it seems to me ought to be determined. I know of nothing, and think the people of this State have set their minds on this subject, and think they would incorporate this in, so to speak, the "belly" of the Constitution. There may be questions of a serious nature that will arise that we have not thought or provided for. There never was a Constitution framed yet, or statute or law made, but astute lawyers could find some flaw; but I will state to the committee that I have devoted, off and on, a week or ten days to the subject, new to me. I have been prosecuting criminals, etc., and this is about all the railroad I have had in mine, though I expect I shall have a good many questions to answer before I get through with this proposition; but I submit it to this committee, and I ask their kindly consideration of this bill. It seems to me it covers every phase of the question. It seems to me it is what we want. I don't see how any one can object to it, unless the rates are ruinous and would confiscate the roads; but I believe there are only four or five in the State to which they apply.

If that bill will result in ruin, we want to know it. Mr. Leeds says no. Now, then, if the railroad people say and can demonstrate that these rates will ruin their property and confiscate it—so to speak, wipe it off the face of the earth—let us hear from them, and if that be the case, I will not vote for the bill or resolution, because I do not believe we can get along without the railroads. The only question is: Shall the people be the creatures of the railroad, or the railroads the creatures of the people; that is all there is to it. We have to have railroads, but let us control them, keep them in proper bounds; let us make them our servants and not our masters. We know they have not been our servants but our masters in this State; what we are trying to do is to put them in the niche where they belong.

EARL: The committee, unfortunately, since the adjournment on Monday night, have not had very much time to examine into this matter. The committee, I will state, of course is in no way informed on the important matters that are involved in this amendment, and we desire to say to Senator Gesford, and to all here that are interested in this matter,

that we wish to investigate it very carefully, and fairly, and sincerely, simply for the truth; and I speak, I think, for all the committee—certainly do for myself—and any of our inquiries that are made here from the gentlemen that propose this resolution, this constitutional amendment, and from the gentlemen who may be opposed to the adoption of this amendment, will be prompted by an earnest and sincere desire to arrive at the truth—the wisdom of the passage of this amendment. There will be, I am sure, no prejudice on the part of the committee. I for one will say my mind is open, and I want to make a thorough investigation of the merits of the matter before me, after hearing, as far as we can consistently with the time we have, what may be said, pro and con, in regard to this matter; the committee will then review the evidence, considering all, and determine on a report.

This afternoon, since printing of this measure, I was looking through it, and I would like to ask Senator Gesford or Mr. Leeds some further questions. The point I wish first to inquire about is, is it intended in section thirty-six, on page two, in the paragraph reading:

"Until the Legislature shall prescribe such rates as aforesaid, or in the event that any such prescribed rates shall from any cause become inoperative, the rates of charges for the transportation of passengers on all railroads in this State whose gross annual earnings are more than \$4,000 a mile, shall be 3 cents per mile, and the charges for the transportation of freight by any such railroads shall be the rates specified in the following tariff, hereby designated as the 'California Distance Tariff.'"

Is it the intention of the proponents of this resolution to fix a limit below which a road could not go in case of emergency for the encouragement of traffic? How would you consider that, Mr. Gesford? You say these rates shall be the rates for passenger traffic—3 cents—the rates prescribed; I apprehend that it is the purpose of the drafter of this to fix a maximum limit. Is that also the minimum?

GESFORD: No, sir; that was not the intention.

EARL: But, observe the language; does it not fix it?

GESFORD: Yes, but the words "shall be not to exceed" should be entered.

EARL: It seems to be a minimum as well as a maximum.

LEEDS: The old bill reads "not to exceed;" that is included in the old bill (looking at a copy).

GESFORD: That was left out. It should read "not to exceed." It is "not to exceed" on the old bill, and you will observe, where mentioned above it also reads "not to exceed." The words "not to exceed" were omitted unintentionally. You will observe, Mr. Chairman, the words "not to exceed" are used in the first provision, relating to the power of the Legislature, and those same words should be used below, also.

EARL: Another matter. It seems to me obscure. I followed the argument very closely, but it seems to me on bottom of page two, after the words "California Distance Tariff" (reading from the bill):

"The classifications of property provided for in this distance tariff are based upon the 'Western Classification,' and the rules governing the same adopted and issued by the Western Classification Committee, of which J. T. Ripley was Chairman, and which took effect January 1, 1893, to which said classification reference is hereby made; *provided, however, that no rule or rules governing said Western Classification pro-*

viding for any change, modifications, or additions to the classifications mentioned in this distance tariff, shall have any application hereto."

I understand from your explanation of this matter, Senator Gesford—I understand you draw a distinction between the language used in this paragraph and the language used in the original amendment, as proposed in the original amendment, and the substitute offered at the last meeting, referring to this Western Classification and tariff, and used language to the effect that it shall be considered as set forth here to all intents and purposes as if it were a part of the Constitution; perhaps I did not apprehend you correctly just now—

GESFORD: That is explanatory of the classification made in the California Distance Tariff; you will notice the first, second, third, fourth, fifth, A, B, C, D.

EARL: You mean to imply that the Western Classification is not to be considered as set forth in the Constitution?

GESFORD: It is not part of the Constitution; simply referred to as explanatory of that classification referred to.

SEAWELL: Then it must be part of the Constitution, this distance tariff; certainly the California Distance Tariff is part of the Constitution, and the idea of Mr. Earl is this Western Classification is also made part of the Constitution.

EARL: You will observe, Senator, that (reading):

"No rule or rules governing said Western Classification providing for any change, modifications, or additions to the classifications mentioned in this distance tariff shall have any application hereto."

Is it not to be implied that the other rules shall have application, and those rules and the application shall be ascertained from the Western Classification?

GESFORD: I think all other rules, except that rule two—I refer to page one of the Western Classification (reading):

"When articles are not classified, or not clearly analogous to articles which are, a special ruling must be asked for."

Making it a shifting classification. Instead of being a shifting classification, or a classification subject to change, it is a classification subject to no change.

EARL: I follow you close, Senator, but is it not to be implied in line twenty-six (reading):

"That no rule or rules governing said Western Classification providing for any change, modifications, or additions to the classifications mentioned in this distance tariff shall have any application hereto;" is it not by implication provided that the other rules shall govern?

GESFORD: The rules govern the classification; there is no question about that; but it seems to me the correct construction—the opposite construction would be the proper construction—that while those rules govern as rules of the Western Classification, they do not govern to such an extent as to make that Western Classification a shifting and unsettled classification. (Reading):

"No rule or rules governing said Western Classification providing for any change, modifications, or additions to the classifications mentioned in this distance tariff shall have any application hereto." The other rules do have application under this distance tariff.

EARL: Then your idea is to make the Western Classification a part of this amendment, save and except the rules referred to on lines twenty-six to twenty-nine, making it a rigid classification?

GESFORD: If I understand you, simply referring to the Western Classification as to fixed rates specified—rates provided for in the California Distance Tariff. Now, you don't have to make, as I understand it, the Western Classification part of the Constitution; you simply refer to it as explanatory of your classification. The distance tariff, instead of enumerating under Classification One, certain articles embodied in it, simply refers to Classification One as the class mentioned in the Western Classification, for brevity sake.

EARL: That is what I understand; for the sake of brevity; it is as if every commodity in the Class One, to which you refer, was set forth in the classification as Class One.

GESFORD: Yes; if you please. I do not think it is any more a part of the Constitution than the Bible would be if you refer to a passage—than the whole Bible would be.

EARL: But the portion you refer to would become part—

GESFORD: It would be for the sole purpose of explaining and stating this portion. Class One, for instance, simply explains the articles in the Western Classification, taking that class. I wish we could get them all there; I don't care how it would look, I wish we could get them there; but the State Printing Office now is an extravagant concern; that is what they say.

EARL: Then, Senator, in that same idea, the proviso which you put in there, saving the adopting of rules in the classification regarding any change, modifications, additions, etc., it is intended, is it not, that the other rules and conditions of the Western Classification set out in this Western Classification back here should have effect—

GESFORD: Should have the effect to govern the distance tariff; yes, sir.

EARL: The committee would like to hear from you on the main proposition, if we may go back to sections one and two of this proposed amendment. If you would like to be heard on the proposition as to the abrogation of the Railroad Commission—as to the necessity for it; as to the wisdom of it.

GESFORD: Mr. Chairman, and Gentlemen of the Committee—That, it seems to me, that is a conclusion that nearly every one not directly interested, has arrived at—in favor of abrogating that Railroad Commission. It is a notorious fact that the Railroad Commission of this State, as organized and existing under the Constitution, has been a failure; that is notorious. The present Railroad Commission—and I do not know one gentleman, and I am only speaking of them now as Railroad Commissioners, am not acquainted with any one of them—but if it is true what is said of them in the public press, and among reputable people of this State, if it is true what is said of them, I do not want to be acquainted with them. The Railroad Commission of this State has done nothing to lighten the burdens of the producers and people; there is a crying demand for the abrogation of that Railroad Commission. Great political parties have taken hold of the matter; county political conventions have taken hold of the matter. There has been a crying demand for the abrogation of that Commission because it has been proven a failure. Railroad Commissions in other States seem to have proven a success. I understand that in most States, where Railroad Commissions are in operation, they have proven successful, but for some reason or other best known to the Railroad Commission itself, it is a failure to-day in California. And while it is true that there is some

objection on the part of many citizens to relegating again to the Legislature the power to fix freights and fares, I believe, with the limitation provided by this amendment, that we will have an improvement on the administration of this power, and get a better system, a better schedule of freights and fares. Now, of course, I do not suppose this committee wants to go into the question as to whether the Railroad Commission, as at present organized and existing, performs its duty.

SEAWELL: The scope of this constitutional amendment is, the people shall fix the maximum—the representatives of the people shall fix the freights and fares.

GESFORD: That is the purpose exactly. That is the proposition in a nutshell; in other words, taking it out of the hands of three men to control this matter, and let the Legislature control it, within these limitations.

EARL: And it is the wisdom of the move—dispensing with the question of what the Railroad Commission is or may have been in California—it is this question I would like to hear in regard to, and I think I voice the sentiment of most of the committee; is it wise to cast back into the Legislature the regulation of the transportation companies?

GESFORD: Mr. Chairman, and Gentlemen of the Committee—That, I think—I think providing a maximum rate as we do in this, it is perfectly safe to do, to place it back into the hands of the Legislature. I do not believe that the difficulties will arise that are arising in the present method of the business of freights and fares. I would not be in favor of relegating this matter to the Legislature without provision as to maximum rates. I believe there ought to be some limitation; that is about all there is to be said on the proposition, unless you want to go into the question as to whether the Railroad Commission shall be abolished because the three Railroad Commissioners do not do their duty.

EARL: The idea I have in mind is this, making it more specific and particular: Is the comparative wisdom between the scheme as herein proposed, the abrogation of the Railroad Commission and fixing maximum rates, etc., between that and the service of a Commission to regulate the transportation companies; and my thought lies along the line, that theoretically, the subject is one so intricate, the subject of rate making for transportation companies, that theoretically, at least, the service of several men sitting for a term of years could more intelligently act than one hundred and twenty men sitting for any length of time. It is along that line of discussion that I, for one, as a member of this committee, would like to hear arguments on the comparative wisdom of the Commission fixing and regulating rates, etc., and the method that is proposed in this amendment of placing the matter back into the hands of the Legislature, that is generally composed of new members, not sitting continuously, and therefore uninformed in any of the technical matters; for instance, if there was a Commission of three men of experience and wisdom—not being personal, say Mr. Leeds—three such men—would it not be more successful in this matter than the Legislature of one hundred and twenty men? That is the thought I have in mind.

GESFORD: I would say, Mr. Chairman, that if you could find three men possessing the information necessary, not to be controlled by any outside influence, they might be able to fix a schedule of freights and passenger rates that would be just and equitable, and give satisfaction to

the people even under the existing law. That fixes a maximum beyond which the Legislature cannot go. Heretofore, of course, the Legislature has been charged with having been corrupted by use of money in fixing of rates. Now the rates will be fixed by the Constitution; they are fixed by the Constitution until the Legislature fixes some other rates. If the railroad people want any different rates, the burden is on them; it will be a good deal harder for the railroad companies, if they are so disposed, to corrupt the Legislature, where the burden is on them to obtain legislation. Under this maximum rate, they must obtain legislation. In other words, if the rates fixed under the Constitution are not satisfactory, the burden is on them to ask for a higher rate.

EARL: Could they ask—they could not, of course, ask for any higher rate than 3 cents per mile?

GESFORD: Supposing the Legislature fixed the rate at 2½ cents per mile, then the railroad wanting a change would have to ask for relief.

SEAWELL: But it is fixed now; they must change it. If we incorporate this in the Constitution, they are authorized to change it under the provisions of this constitutional amendment—the rates enacted in this schedule; now, to change those rates, it will require affirmative legislation on the part of the Legislature, and if they are too low—if the Legislature goes too low, then the railroad company, if an injustice were done them, would be required to come in and say to the Legislature: "You are limited by the Constitution to a certain amount, but we ask you to increase the rates on this classification."

EARL: That would be seeking relief, provided the Legislature cut the rate down. I would like to ask further—passing the matter as to the wisdom of the acts of the Legislature—now, speaking specifically, the Southern Pacific, a corporation, as it is generally understood to be, is the lessee of lines operating several roads in this State—how many I do not know, but suppose five, six, seven, eight, ten—the Central Pacific, Southern Pacific, Western Pacific, Northern Railway, running to Berkeley, and others. Now, that system of roads is operated as a system, as it is designated, and will come under the sweep of the proposition as suggested here:

(Reading:)

"Railroads shall be considered independently in computing distances; except, however, that a system of railroads consisting of leased, operated, or independent roads, controlled under a common management, although working under different charters, shall be considered and treated as one road, and the distance shall be computed over the shortest operated line composed of two or more of said roads."

Now, suppose for a moment, that the Southern Pacific should disincorporate and cease to operate these roads under its management, and diverse corporations, which are lessors under this system now—suppose they should operate independently and go in and lease to some other and smaller roads, or the gross earnings of these different roads making up the general system should be less than \$4,000 per mile; if they should operate independently, on a smaller system, your idea is they would not go under this regulation of Section 36; the maximum rates herein prescribed would not apply to them if they acted independently, and their rates fall under \$4,000 per mile, gross earnings?

GESFORD: Of course not.

EARL: Suppose that on operating those lines, I presume some of them

are now earning less than \$4,000 per mile, yet under this proposition here prescribed, they come within the maximum rates fixed here, because they belong to a system. I do not know as to the stockholders, but suppose that the stock is controlled by a number of individuals, who control most of the stock in the several corporations; would not this operate in a measure on the stockholders of these individual corporations? A road not obtaining \$4,000 per mile, yet coming under this rate, whereas, roads which are not paying four thousand per mile, and are not part of the Southern Pacific system, would be able to charge a larger rate. Is it not injustice to the stockholders in the combined system, for their road to come within the sweep of this amendment; is it not an injustice; does it not deter them leasing the road, for instance?

GESFORD: I do not think so. If I understand you correctly, there is a system of roads, and that system earns less than \$4,000 per mile; of course the Legislature fixes a different rate.

EARL: The stockholders in a particular corporation that might be leased to a common management, would not receive as much on their investment as a corporation which does not lease and operates independently, and does not come under the maximum rate.

GESFORD: Yes.

EARL: And yet some roads might be built and operated—running, say through fertile districts, and having, for instance, say like the Yreka road—being complete practically in itself, might be able to operate independently, and gain larger returns from an investment, than a road running, for instance, in the San Joaquin Valley, costing as much per mile, and which, in order to operate at all, must lease itself to some other and larger company, and by this provision being put in here, the rate of profit for this investment to the San Joaquin Valley road would be less than that for the Yreka road.

GESFORD: Yes, it might; but I don't see that we can help that.

EARL: Mr. Leeds, will you give the committee a resumé of the figures you gave the other night? Senator Seawell is here to-night.

LEEDS: I don't know whether I can give them in the exact order as I gave them the other evening. One statement which I made the other night was that the earnings of the roads within the State of California, including the entire system of the Southern Pacific Company, were \$9,021 per mile; that covers three thousand four hundred and ninety-eight miles of road; that the interest on bonded debt paid by the Pacific System upon some of that was \$8,675,587 42. I have since learned that the capitalization on that three thousand four hundred and ninety-eight miles of road—their funded debt—is \$144,494,500, or \$41,305 per mile; the capital stock of same would be \$165,311,300, or \$47,255 50 per mile, and an aggregate capitalization for the two, funded debt and bonded issues, of \$88,560 50 per mile. Taking the entire Pacific System, if you please, now, the rate per ton per mile—giving this backwards, however—

EARL: Meaning by the entire Pacific System, from El Paso and Portland to San Francisco, and from Ogden, also—

LEEDS: Yes; the rate per ton per mile on through freight was 1.119 cents; on local freight, 2.699 cents, and on all freight, 1.835 cents; that the local freight is two and a half times more than, or 226.6 per cent of the rate charged on the through. The average haul on through freight

was 906 miles on each ton, and on local, 101½; the aggregate on all, 206 miles. The rate per ton per mile on the Atchison, Topeka, and Santa Fe road, on all its tonnage, is 1.219 cents. The difference between them is .616 of a cent, or a little over .6 of a cent per ton per mile, between the two. The average train on the Pacific System of the Southern Pacific Company is 124.63 tons; the Atchison, Topeka, and Santa Fe, 118.84. The difference is 5.79 in favor of the Southern Pacific. They consume fifty-six pounds of coal to haul this one hundred and twenty-four and a fraction tons, as against the Atchison's one hundred and eight pounds in carrying 118.84 tons. The cost to the Southern Pacific, as reported, is \$5 79 per ton; the Atchison, \$2 11—per mile run by their locomotives per ton of coal. I will say in explanation that this amount of coal per mile run for locomotives includes, I believe, all coal consumed by both companies. The miles of run per ton of coal on the Atchison is 26.12, and by the Southern Pacific, 29.74, indicating that notwithstanding they use less coal, they make better mileage with a ton of coal than roads east of the Rocky Mountains.

The percentage of gross earnings to operating expenses on the Southern Pacific is 59 per cent.

EARL: The what? I don't exactly understand. A. The percentage of gross earnings used in operation on the Southern Pacific is 59 per cent; on the Atchison 69.19 per cent. Following are some of the gross earnings on different parts of the Southern Pacific on traffic in California: Southern Pacific of California, gross earnings, \$9,279,822 50, or \$6,611 54 per mile; they use 58½ per cent in operations. South Pacific Coast earn \$1,107,772 87, or \$10,631 56 per mile; they use 64.55 per cent in operation. California Pacific earned \$1,528,047 72, or \$13,242 79 per mile; they use 50.31 per cent in operation. The earnings of the Pacific system, 4,625 miles, is \$8,002 18 per mile, of which they use 59 per cent. The Atchison earnings, \$5,114 57 per mile, of which they use 69.19 per cent. The percentage of empty cars and loaded on the Southern Pacific (Pacific System) was 24.79; the Atchison, 28.32. The coal on the Southern Pacific, according to their report, cost them 8.9 per cent of their gross earnings; on the Atchison, 7.8 per cent. I think that is about all the figures I gave the other night. Now, I want to say a word in reference to a question you asked Mr. Gesford a few minutes ago. I am not an attorney, but I have made some observation of your law here in regard to the Railroad Commission. It has been a notable fact, at least so far as I am connected with it, ever since the Railroad Commission has been in existence, that all rulings they made, whether favorable or unfavorable to the railroad company, were put in effect under written protest, claiming that this Commission had no authority to regulate the rates and fares, indicating, I should think, that if anything were done that was considered undesirable the constitutionality of the proposition would be tested, and, judging from what has taken place in Texas, it would appear that you have relegated all the power you have in the State to fix rates and fares, to three men who are supposed to have the power, or rather the authority, but not the power to enforce what they may propose. And whether this proposition were put in effect or not, if the law, as it stands to-day, is effective, it strikes me it should be tested and something put in effect, if it is not, which will reach the case.

EARL: You refer to the fact that by the terms of the present Consti-

tution, regarding the powers of the Railroad Commission, that the rates which they fix are not *prima facie*, but presumed to be just and reasonable? A. It would be necessary to go into the Courts to enforce that.

EARL: The Courts have the power, whether coming through the Legislature or Commission, or any other governmental agency, to fix rates, with this proviso and limitation, that the rates fixed must be reasonable. I believe that was the statement you gave at the last session of the committee, was it not? A. Yes; but the Commission do not act, and seem to be powerless.

EARL: I was referring to the Constitution. What they fix is presumed to be reasonable and just; their acts—the reasonableness of their acts—is not reviewable in the Courts. It seems to me the intent of the framers of that organic law was to give absolute power to the Commission. That was the theory under which the organic law was framed. By judicial interpretation since then the power to fix rates has a limitation placed on it, the limitation being that the rates are and must be reasonable and just to the carrier. Now, so far as our Constitution is concerned, that feature of the Constitution giving power to the Commission, undoubtedly its form, so far as the absolute conveying of the power is concerned, I think is recognized; and I understand you stated the other evening that the rates fixed must be just and reasonable, otherwise they could be annulled by the Courts.

LEEDS: That is very true. In a decision recently I think the Court made use of this language, that: "Whether the rates prescribed were reasonable or not they were still subject to the sanction of the Court."

EARL: This is a question of reasonableness. The Railroad Commission, under the organic law of this State, can get out a writ of mandamus, or a writ of injunction, as they have a mind to, enforcing the application—or compliance, rather—to the schedule of rates they may prescribe, and if they fix the rates at given figures, say two cents per mile, and the carriers decline to conform, they would get out a writ of mandamus against the carrier; and, in order to prevent the rates becoming effective or operative, the railroad would have to go into Court and show its injustice, otherwise the rates would apply. They have that power, Mr. Leeds. A. They may have the power, but do not seem to exercise it.

EARL: Yes, the power is lodged there. I was trying to ascertain your thoughts, so far as the power is concerned; you say they have the power, but no way of putting it into effect. A. It must go through the Court whether reasonable or not; they must secure the enforcement of what they do whether reasonable or not. Regarding the practicability and use of the Western Classification, which may be brought up if it is put in effect, say for two years, without any fluctuations, I will only say that, on staples, changes in the classification are seldom made. Articles, say taking fifth class, or Class A, which carry a great amount of tonnage, are not very frequently changed. And the changes which are made, are made more frequently to facilitate the interchange of business between lines which cover more largely less than carload shipments than carload business, and would have less effect, so far as the changes that may occur through the instrumentality of the Classification Committee, than might be expected from the number of them. And there is also this, that a large number of those changes are made on manufactured articles, the factors of which you have not here, and hence they

would not very seriously interrupt the business of the State; the application of it would only be on business picked up at one point and laid down at another point in the State. Furthermore, this classification covers a very large territory. It has got a very large number of articles in it, perhaps, that seldom move in any one locality; there are something like fifty-two or fifty-three hundred articles in the classification. Perhaps 5 per cent of those articles would be 75 per cent of the tonnage that moves from one station in California to another, so that whatever changes might be made in that classification, would not likely materially disturb the situation in California if an inflexible application be made. It would not disturb the situation even if it were put in effect for two years without any changes. Besides, the hardships that might occur by reason of such changes, would be more likely to occur by reason of a reduction than by an advance. There is no proviso in the resolution that I know of that prevents a rate being made which would take care of any exigency that might arise. You have but seldom changed the classification here for many years past. The Board of Railroad Commissioners are given the full power to regulate this matter of rates of freight, and I don't believe any one can point to a time within the past two years that the Railroad Commission have made any revision of the classification, or, in fact, that they ever made any. Furthermore, the Western Classification is in effect in Southern California; it is also in effect in this portion of the State on interchange business by the Southern Pacific Company, and I do not see just exactly why it became necessary for them to put the Western Classification in Southern California, and when the road applies it on through business, or interchange business, in this part of the State, why it becomes necessary to hold in effect two separate local classifications in this part of the State, and why they have made no changes in them by reason of changes which may have been made in the Western Classification, provided the business might require it.

EARL: I would suggest, Mr. Leeds, that there is a competitive road down there that uses the Western Classification? A. But the Commission have the power, and they must have put it in effect down there; it certainly would not have gone into effect without their doing so; there is no power to make a rate in the State without that; they must have done it.

EARL: You understand from the language of the proposed section that the Legislature can change this classification? A. Certainly.

EARL (reading):

"The Legislature shall have the power and it shall be its duty to establish rates of charges for the transportation of passengers and freight by all railroads operated in this State."

Q. You would give them full power to fix the rates? A. I understand that gives full power to change in any way that was most expedient.

SEAWELL: You will notice there is a proviso.

EARL: The question is whether the Western Classification can be changed by the Legislature. If that power is given to the Legislature by this language of Section 36, can they fix the rates or revise the classification? There is a difference between this bill and the bill first proposed. The language is very obscure.

GESFORD: They have the power. Providing they do not fix a higher rate than is reasonable, they may fix any rate they see fit.

EARL: They would have to change the classes in the Distance Tariff, as that is where the rate is ascertained.

LEEDS: Suppose they want to make a higher rate than on Class Third—a lower rate, rather—and that it shall be Class B.

EARL: Can they do it? A. Yes; why not?

EARL: Well, what roads, Mr. Leeds, in this State now would be affected by this amendment; in other words, those whose earnings are \$4,000 a mile or over?

LEEDS: The Southern Pacific Company, California Southern, North Pacific Coast, and the San Francisco and North Pacific.

EARL: North Pacific Coast; the so-called Donahue road? A. Yes, sir; and also the Arcata and Mad River.

Q. That is a narrow gauge; and the Santa Cruz Road, that is part of the Southern Pacific system? A. Yes; I believe those are all.

Q. The Southern California is the Atchison branch? A. Yes; the Atlantic and Pacific is not in, but the Southern California would be. I also say further, that what is proposed is no experiment; that such a tariff is in effect in almost all States east of the Rocky Mountains, and there is nothing in this proposed here different than the basis applying to other Territories and States.

EARL: What, Mr. Leeds—referring to some information you afforded us last Monday evening—what basis is to be considered in fixing a rate which is just and reasonable; what elements?

LEEDS: I should say that the operating expenses, and a reasonable return on the investment of the property.

Q. Would bonded indebtedness—the interest on bonded indebtedness—be an element? A. If it were reasonable. I do not believe that the people ought to be called upon to stand between a purchaser of bonds and a dishonest capitalization of property.

Q. How can we arrive at cost, and the honesty or dishonesty of capitalization? A. There are plenty of men competent to tell what a road will be built for; that can be very closely demonstrated.

Q. What it has been built for, but not duplicated or can be duplicated for? A. I know of no good reason why a piece of property is worth more than it can be rebuilt for to-day.

Q. But it is the investment that should be considered? A. But should there be any discriminations between investments one for one and another for another; should you direct everybody in their investments, whether good or bad?

Q. It is different, however, with investments in which the public are interested. The State having the power, has laid down in the so-called Green cases—having the power to fix a rate, and by judicial determination held that this rate must be just and reasonable—that limitation being on the State to fix rates in any business like a carrier's business, or elevator, water companies, gas companies, etc., is it not inevitable that the cost of the investment itself must be considered; not, what in the course of time, by cheapening of material and labor, and perhaps other items, a duplicate would cost? A. Perhaps; we have been told in California, here, within a few months past, that the owners of this road have never received any return on the investment, and some were barely able to meet their funded debt obligation. I would like to ask if it is reasonable here—that there is any road in California—in the valleys especially—that ought to represent a capitalization of \$163,073 per

mile; that ought to represent a capitalization of—a bonded indebtedness of \$59,126, and another \$54,349, making an aggregate of \$103,475; another one aggregating \$58,434; another \$110,576; another \$41,435; and still another, \$76,301 97? I do not know whether it would be reasonable to expect the public to put up for earnings on that kind of a proposition. I should think not. That represents three thousand, four hundred and ninety-eight miles of railroad, which you are expected to put up the necessary money to pay the interest on a capitalization amounting to \$309,805,800, or \$88,560 average per mile.

EARL: Bonded indebtedness? A. No, sir; that is the aggregate of it; the bonds amounts to \$41,305. The aggregate of the capital stock is \$47,255.

Q. In turning over some Interstate Commerce reports this afternoon, I find it laid down that the matters to be considered in fixing rates were the operating expenses, bonded debt, fixed charges, and dividend on the capital stock. A. Well, let us see if you are being fairly treated on that basis. The earnings per mile of road on this portion I have talked about is \$9,021; taking the entire Pacific System it is \$3,002. The earnings of the road in Oregon is \$3,502 37; the earnings of the road in New Mexico and Arizona is \$5,506 16; the earnings of the Central Pacific, for the entire system, is \$12,224 76 per mile; the earnings of the South Pacific Coast (narrow gauge) road is \$10,651 66; the California Pacific is \$13,247 79 on 115.44 miles, indicating at least \$10,000 a mile for all the roads inside the limits of the State of California.

Q. Leaving the Southern Pacific road out of consideration, Mr. Leeds, are those the elements that make up the basis upon which a rate is to be calculated? A. Do you want to know how I made up this tariff?

Q. I will arrive at that presently. Are those the elements entering into the calculation upon which a fair rate is ascertained; that is to say, the operating expenses, the interest on bonded debt, the fixed charges, and the dividend on capital stock? A. Well, I don't believe you ought to put in the dividend on capital stock here unless it costs something.

Q. Taking the matter theoretically, are those the elements? A. Theoretically, you would want to find out how much it costs to do business, and if you have anything left for a dividend on capital stock, make a dividend on that.

Q. The elements of debt—the interest on debt comes in? A. Well, the bonds are supposed to cover that, unless you have a floating debt, which you have to pay, of course.

Q. You were about to make some observation when I discussed the matter? A. I was. I made a good many comparisons of rates, charged in California, with those charged in other portions of our country east of the Rocky Mountains. I discovered that, on general merchandise, you were paying considerably more than 30 per cent higher rates, on actual tests as to the business done. On wheat, about 23 or 24 per cent; on other grain, 45 per cent. The tonnage here, taking the earnings of the roads and the rates, was greater on the roads in California per mile, than it was on the roads for which I made the comparison, from the fact that their gross earnings are a greater percentage over the road I made the comparison with, than 30 per cent, or any other per cent in the difference in the price charged. I then undertook to make a tariff which I believed would make an aggregate yield on

the tonnage moved, as large as that accruing to the roads for which I made the comparison. These comparisons were made mostly with Kansas and Nebraska roads.

Q. Those roads were built since the Central Pacific and Southern Pacific railroads? A. Well, there was a good deal of the Southern Pacific road built about the same time as these roads were.

Q. The Atchison road you were speaking about was built more recently, was it not? A. Well, it was begun pretty early, and considerable of it built within four or five years of the time of the building of the Central Pacific.

Q. Have you any data that would give us a comparison between the cost? A. No, sir; I have not.

Q. If you have any further information to offer the committee, we would be very glad to have it. A. I believe I have not.

STATEMENT OF MR. A. BURROWS.

(Representing the Nevada County Narrow Gauge Railroad.)

CHAIRMAN EARL: The other evening there were some gentlemen here that wished to be heard, representing some short lines, saying that Thursday would be an improper time for them, or at least an inconvenient time. The committee is not desirous of holding a late session to-night, but will afford a few moments to any gentleman that desires to be heard and cannot be here at subsequent sittings of the committee.

MR. BURROWS: I believe I am the party referred to. I am here in the interest of the Nevada County Narrow Gauge Railroad. I don't want to impose on the committee by having the session taken up. If I could understand that this committee could meet at any convenient time subsequent to Thursday night—say Friday night, or some night after to-morrow—I would try to be here.

SENATOR SEAWELL: I belong to six or eight committees, and cannot meet with all of them. I will meet here to-morrow night. Cannot you come before the committee to-morrow night?

BURROWS: No, sir. I have a motion before one of the Courts in San Francisco at that time, and must be there. I cannot get back here in time; but if the committee can tell me how much time they can afford me—

SEAWELL: About how long do you desire; about half an hour? A. Oh, about twenty minutes. I do not think I will be more than twenty or thirty minutes.

SEAWELL: Oh, well, if that is all, we will hear you to-night.

MR. BURROWS: Gentlemen of the Committee—As I stated, I represent a little line way up in the mountains, known as the Nevada County Narrow Gauge Railroad. It runs from the station at Colfax, on the Central Pacific Railroad, to the town of Nevada City, a distance of twenty-two and one half miles. The proposed amendment to the Constitution that is here before you, though from their report technically we are not included, as a matter of fact I will show you that we are included with those longer lines; the receipts of the road being not exactly \$4,000 per mile, but thirty-nine hundred and a fraction, leaving

us no margin whatever for an increase which we have a right to hope and expect in the future; so that we are placed in the predicament, that if our traffic should increase our receipts would diminish. That is the position we are placed in, and that is one proof of the fact that there is something very clumsy about this proposed amendment to the Constitution, when such an extraordinary result will take place under those circumstances. The distance, as I have stated, is twenty-two and a half miles. It is a narrow gauge railroad, winding around the mountains, in and out, here and there, with very little local traffic, except what comes from the two towns of Grass Valley, with six thousand inhabitants, and Nevada City, with five thousand inhabitants; being originally built more for a wood road than for anything else, yet being a matter of vast accommodation to that portion of the country, which in the winter months, if it were not for that road, you might say would be almost shut out from civilization, because the ordinary wagon roads are almost impassable. The cost of that road was \$625,000; it has a bonded indebtedness of \$260,000, paying interest at the rate of 8 per cent per month.

EARL: You mean per year. A. Oh, yes, per year; that is what I meant. In reaching those points it crosses five trestles from thirty to one hundred feet high, one of which is seven hundred feet long. Wooden trestles require a vast amount of yearly repair to keep them in condition so that they will be sufficiently safe for travel. The average cost for repairing bridges, etc., for the past year, and several years past, is \$3,000. The average cost of keeping up the road for several years past has been \$15,000. The average receipts for the years 1890, 1891, and 1892, averages about \$88,000, in round numbers. Those receipts for 1880, Mr. Chairman, amounted to \$115,000. The shrinkage that has occurred between 1880 and the present time amounts to \$38,500, or thereabouts, yearly, caused by the stoppage of hydraulic mining, which has decreased both the freight traffic, and also the passenger traffic. This shrinkage in the past ten or twelve years is about 20 per cent. This road has paid dividends up to 1880, which have paid the stockholders \$21,000. Since then it has paid no dividends whatever, except an amount to which I will refer in a few moments, but it is not worth while to take into consideration. It is very nominal. The decrease in population in Nevada County during that period was 20 per cent, which, of course, has had the effect upon the road of decreasing the revenue from \$21,000 to \$17,000. The interest on those bonds is \$21,000 per year, and taxes \$3,000. The operating expenses amount to \$63,000. It expends annually in construction, improvement, etc., the sum of \$3,000, so that for the past year or two the profits of the road, that is to say after taking out all the expenses, amount to less than \$500 per annum. Its net income has been less than \$500 for several years.

EARL: That is, per annum? A. Yes, sir; per annum.

Now, as I said before, this road is placed, not in the same class with the longer roads, yet the margin is so small that any increase whatever will cause it to be placed in that category, and subject to the provisions as herein set forth. We feel we are like the man who has a cord around his neck, who, when asked if it is pretty tight, says: "I can stand that." "Do you think you can stand another knot?" "No, I am afraid it will choke." The effect of the existence of that amendment to the Constitution will necessarily be—I don't think I need dwell particularly upon

that fact to you—would necessarily be to pull that rope. Our present rate for both freights and fares is high, as compared with other roads, but not high as compared with the income of the road and the expenses of running the same. A franchise granted in 1874 called for this:

"It shall be lawful for the parties aforesaid, and their assigns, to charge and receive a sum not to exceed 10 cents per mile for each passenger, and 20 cents per mile for each ton of freight per mile, transported on said road."

It also contains:

"If it shall appear upon the annual statements made by the road that the net revenue arising from the earnings exceeds 12 per cent per annum, it shall be proper for the Board of Supervisors to adjust the fares and freights, and fix such rates as will realize a net revenue equal to but not to exceed 12 per cent per annum."

In order to exist it has got to charge the maximum rates, and a decrease in any of those rates would render the road bankrupt; because, running as it exists to-day, why it is just barely able to live, and the effect of this proposed amendment to the Constitution would be to practically bankrupt the road—wipe it out of existence. As I said before, it seems to be a very strange state of affairs, that an amendment to the Constitution should have the effect that a small increase of traffic to the road would place it under the influence of such an iron rule as would practically destroy its existence. Now, I don't know much about railroads or about the minutiae concerning the running of this road or any other road. The President of the road is here; also the Secretary, with all the official papers and all the data, who will explain to the committee, if necessary, under oath, to bear out the statements I have thus given to you in brief. I have here a little bit fuller report of the road and its income for the year 1890. The gross earnings for that year were \$87,259; operating expenses, \$74,049; construction expenses for that year, \$1,494; interest on bonded debt, \$20,601 47; interest on floating debt, \$311; total, \$96,455 47.

The par value of the stock is \$100 per share, and it is at present quoted in the market, where you can get anybody to buy it, at \$10 per share; so the road, as it exists to-day, is not a source of profit to its stockholders, but it is a source of vast convenience to us, living way out in the backwoods, and its destruction or bankruptcy would be regarded as a calamity in many a home. I want to say, with your permission, a few words in relation to the general principles of that proposed amendment to the Constitution. From what the Chairman has already said, I know that you, Mr. Chairman, and no doubt the rest of the committee, are entirely familiar with the more recent decisions of the Supreme Court of the United States in relation to matters of this kind, notably that one which is contained in the 134th U. S., wherein Justice Lamar—who has just died—filed a dissenting opinion, claiming that the Supreme Court, or a majority of that body, had almost entirely destroyed the effect of the Granger cases, as well as that of other similar cases. I do not know but that Justice Lamar, who was a most profound constitutional lawyer, was about right, that effect of the so-called Granger cases, and other cases of the same character, in which it was held and maintained that a State had almost absolute right and control of corporations, and to fix fares and freights, was so modified that the force of those decisions had been knocked out of them.

I will read a little bit from some portions of it:

In 134th United States, in the case of *Chicago, Milwaukee, and St. Paul Railway Company vs. Minnesota*:

In fixing fares and freights, the Legislature declared in the organization of the Railroad Commission that they should have absolute right, and that the fairness of those fares and freights fixed by the Commission should be conclusively presumed, was not to be attacked or capable of being attacked in any Court; in other words, they wanted to shut out the Commission from any judicial investigation, and the Court says, in reviewing a number of cases, page 455:

"In *Stone vs. Farmers' Loan and Trust Company*, 116 U. S. 307, 325, the whole subject is fully considered. The authorities are cited and the conclusion is arrived at, that the right of a State reasonably to limit the amount of charges by a railroad company for the transportation of persons and property within its jurisdiction cannot be granted away by its Legislature, unless by words of positive grant or words equivalent in law; and that a statute which grants to a railroad company the right 'from time to time to fix, regulate, and receive, and tolls and charges by them to be received for transportation,' does not deprive the State of its power, within the limits of its general authority as controlled by the Constitution of the United States, to act upon the reasonableness of the tolls and charges so fixed and regulated. But after reaching this conclusion, the Court said (page 331): 'From what has thus far been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law.' There being, therefore, no contract or chartered right in the railroad company which can prevent the Legislature from regulating in some form the charges of the company for transportation, the question is whether the form adopted in the present case is valid."

It says, "This power to regulate is not a power to destroy," and it would amount to destruction to this little road.

GESFORD: If I understood you, your road does not pay \$4,000 per mile, does it? A. I say it is on the margin; it is so close to the margin that the effect of any improvement—if there was any improvement—the effect of it would be to place it in that class.

GESFORD: Do you charge 10 cents per mile? A. Yes, sir.

SEAWELL: Well, you could not get along then at three and haul the traffic? A. Not for a great distance, sir.

EARL: You were quoting from Justice Lamar's opinion there; you were, were you not, and concurred in by the Court? A. Yes, sir. I will now read from the "American Encyclopædia of Law," page 914:

"*Charter Provisions Relating to Freight as Contracts.*

"Where a carrier's charter contains a provision that the company may establish such rates of fare and freight, or such rates as do not exceed a certain maximum, the question arises: 'Does the grant of such

a privilege constitute a contract, leaving to the carrier the adjustment of charges unrestrained by other limitations than that they shall be either reasonable or within the maximum?' Although there has been some conflict of opinion, the question must be answered in the negative. The common law rule that the carrier's charges shall be reasonable, would in any event be read into a charter. The grant of a right to fix reasonable charges does not carry with it the power to declare what shall be deemed reasonable; such a privilege belongs to that class of powers the grant of which can only be made in express terms, every presumption being against it. (Case of *Ruggles vs. Illinois*, 108 U. S., page 526.)

Ruggles vs. Illinois, 108 U. S. 526: "An amendment was made to the charter of a railroad company in Illinois, 'providing that the said company shall have power to make, ordain, and establish all such by-laws, rules, and regulations as may be deemed expedient and necessary to fulfill the purposes, and carry into effect the provisions of this Act, and for the well ordering, regulating, and securing the affairs, business, and interest of the company; provided, that the same be not repugnant to the Constitution and laws of the United States, or repugnant to this Act, the Board of Directors shall have power to establish such rates of toll for the conveyance of persons or property upon the same, as they shall from time to time by their by-laws determine, and to levy and collect the same for the use of the same company.' Held, That inasmuch as the power to establish rates was to be exercised through by-laws, and the power to make by-laws was restricted to such as should not be repugnant (among other things) to the laws of the State, the amendment did not release the company from restrictions for the amount of rates contained in general and special statutes of the State.

"The Court observes that there is nothing which even in the remotest degree indicates that a by-law fixing rates is to be of a different character from those regulating the other business of the company. When, therefore, in a section of the charter which expressly declares that no by-law shall be made that is in conflict with the laws of the State, we find that the rates of charge to be levied and collected for the conveyance of persons and property are to be regulated by by-laws, the conclusion is irresistible that only such charges can be collected as are allowed by the laws of the State. This implies that in the absence of direct legislation on the subject, the power of the Directors over the rates is subject only to the common law limitation of reasonableness; or, in the absence of the statute or other appropriate indications of the legislative will, the common law forms part of the laws of the State, to which the corporate by-laws must conform. But since, in the absence of some restraining contract, the State may establish a maximum of rates to be charged by railroad companies for the transportation of persons and property, it follows that when the maximum is so established, the rates fixed by the Directors must conform to its requirements; otherwise, by-laws would be repugnant to the laws."

Chief Justice Waite, in deciding one of the cases, has stated:

"Under pretense of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which, in law, amounts to the taking of private property for public use without just compensation, or without due process of law. What effect this would have we need not now say."

If it was evident from the franchise that the State "did not desire, or decline, or was unwilling," from which it could be clearly inferred that the State did not desire, or had surrendered its right to control the fares and freights of corporations, then, as a matter of fact, such result can be obtained, I take it for granted, from reading the franchise in this case, Mr. Chairman—the franchise granted to the Nevada County Narrow Gauge Railroad. There is a fixed maximum stated in all the Granger cases, and language of this character was used:

"The Board of Trustees, etc., of the corporation shall have full right to fix such charges which to them may seem reasonable," using that word.

Under that provision, and similar language, it was held that the State could not be said, by the exercise of that franchise, to have abandoned their right to interpose and fix what those reasonable rates were.

Under the charter granted to this little road, the language occurs which, I think, complies with what Chief Justice Waite has said, and must be fair. The State, in granting this franchise, had surrendered the right to control fares and freight by the language of the franchise of this little road.

This road is allowed to charge 20 cents per ton per mile. I claim that is a contract. I know it is regarded as a chestnut to say that a franchise can bind the State. I say it is regarded as a chestnut to say that there can be anything like a contract between the State and a corporation by their franchise. I claim any one who will carefully read the recent decisions of the Supreme Court of the United States, in connection with the Granger cases, and other similar cases, will see that it has been held fairly that, where the language of a franchise is such as shows that the State intended thereby to abandon its right to fix fares and freights, it amounts to a contract; that in this sense, in the case here at bar, in the case of the franchise of the Nevada County Narrow Gauge Railroad, our franchise is set above the amendment of the State by its Legislature or Constitution. See the effect of putting into a Constitution an amendment of the character proposed here. Here you have a Constitution which attempts to fix the fares and freights; somebody objects to it; it finds its way into the Court. Well, the Court decides that they are unfair, unreasonable; and the people of the State, the authorities, and the Constitution must succumb to that decision, and there is one hole knocked in the Constitution. Another railroad company takes up the question at a subsequent time, and the Court declares in this case the rates are unreasonable and unfair. It gets into Court and gets a judicial determination. There is another hole knocked in the Constitution. And so on, one railroad company after another makes successful attacks upon that provision of the Constitution until you have a State Constitution, or at least a provision in it, as full of holes as a milk strainer. And the result of it is that you do not know where you are standing. I claim such a Constitution of that kind would be a disgrace to the State, and I stand upon that assertion.

I refer you to case of *Munn vs. Illinois*, 94 U. S., page 113, and to other cases.

Railroad companies are carriers for hire. They are incorporated as such and given extraordinary powers in order that they may the better serve the people in that capacity. They are, therefore, engaged in a public employment affecting the public interest. And in the decision

of *Munn vs. Illinois*, page 113, subject to legislative control as to their rates of fare and freight, unless protected by their charters.

So far as the Nevada County Narrow Gauge Railroad is concerned, the State has absolutely stated that they may fix the charge at 20 cents per ton per mile, whether reasonable or not. No such provision is in the Granger cases which permits the State afterwards to intervene and take a hand. If there had been any intention of that kind in our case, it would have been easy to have said so. I can say conclusively that there was no such intention. Now, there is a number of authorities here I intended to quote, but which the lateness of the hour prevents my doing. I claim, so far as this railroad is concerned, under its franchise, no one can say what rates it shall charge, or what it should receive. I say it is unfair to have the people of this State, either by Legislature or any provision in this Constitution, interfere with the fares and freights of that railroad. I will say that we insist as a rule, which applies to all railroads, which I suppose will go without saying, or at least among lawyers, as the reason the State has no right to impose any unreasonable fares and freights, if any commission or State undertakes to do so, that the remedy may be obtained by judicial proceedings.

SEAWELL: Don't you think the corporate State provision of the Constitution would affect all franchises hereafter granted; would it not? Would it affect railroads the language of whose franchises do not fix maximum rates? A. It would affect railroads where similar language is used as passed upon in the Court in the case of *Munn vs. Chicago*, where reasonable rates were left to be fixed subsequently.

SEAWELL: Well, you say the State has no right to interfere with you; that your franchise is above the State? A. Well, a party may set up as many defenses as he wants, whether he has any or not.

Q. I do not see that even if it was incorporated in the Constitution, according to your idea, this would affect you. I do not see that you are interested in any way, are you? A. I contend we should not be. The Attorney-General may not think so by and by. The Attorney-General of the State may see fit to put us to a vast amount of expense. We may have to go to the Supreme Court of the United States. We may have to go through the Supreme Court of the United States to have our rights sustained; we cannot afford to let the matter rest.

In relation to the general question, the gentleman here who supported this proposed amendment, from Napa, has asked whether or not this bill is constitutional. As I have already stated, and I think he will agree with me in stating, this bill is a clumsy affair, to say the least. It is a very clumsy thing to incorporate into a Constitution. It is very clumsy to incorporate some matter which has to be explained by referring to private records; to the records of a traffic association, which are only private records. It would appear to be a very absurd matter to place in the Constitution—to place in the Constitution a thing which must be explained by referring to the private books of some banker or some mercantile corporation. I say it has no precedent to put a matter into the Constitution of that kind, the force and effect of which must be discovered by rummaging into the private books of some association. Now, as to the effect—as to whether it is constitutional, or not. As I have already stated, it is constitutional, and it is not constitutional. It affects to give control by this bill to fix the

matter of fares and freights without any regard to the reasonableness of the same. It provides for no records whatever, and any judicial tribunal will discover it to be arbitrary—for the people can be arbitrary, too, just as well as the Commission can be arbitrary. The history of the world shows that from the earliest times up to the present, the people frequently, not only in moments of frenzy, as was illustrated in the events of the French Revolution, but also in their calmer moments can be unjust.

I claim where provision is inserted in the Constitution, which provides for bad judicial methods, upon which the fairness or unfairness of the plan therein set forth can be determined by test, it seems to be otherwise than feasible.

One word more I will say in conclusion. There is a decision, Mr. Chairman, you will find here in this volume of American and English Encyclopædia, wherein it is held that it is no excuse for unfairness for a schedule compelling a railroad to carry freight and passengers over a certain point at a loss, to say that they can make it up because the balance of the road would pay. There is a decision here, from the Supreme Court of the United States, in reference to that, the substance of which is, that in order that fares and freights should be reasonable, the amount fixed for charges between any two points should be reasonable, regarding those two points as a link between two other portions of the road.

Now, there is a portion of the road which we have to travel over to get up to the mountains; we have to pass from Rocklin to Colfax, and from Colfax still further to Truckee and the State line, over a portion of the Central Pacific road, at the same time it is important to us as a connection between that portion of the mountains and the valley. I claim and know well enough from the traffic that goes over that portion of the road, and the running expenses of it, there must be a very small amount of profit in that portion of the road—for that portion of the Central Pacific. The profits of that portion of the road must be exceedingly small, as I know well enough from the traffic, which is very small. I claim, so far as those mountain portions of the road are concerned, that it is inequitable and unfair, under the Supreme Court decisions of the United States, to compel them to carry freight and passengers over that portion of the road at the same rates as over the valley portion, because it is a very expensive portion of the road, the operating expense being much larger than the balance of the road. I think that is an important matter and a matter that cannot be overlooked.

EARL: Do you think this State regulates a rate on any through freight? Would it be within the powers of the State to do that? A. No, sir; I claim that it would not. My idea is, this applies to rates of freight between any two stations within the State; that the rates must be fair and reasonable as between those two stations, regardless of the fact that the balance of the road pays; therefore, I do not think that you can start right in, and provide fares and freights by the constitutional amendment proposed here, or by anything of the kind. I will say, as a citizen, that the only trouble I can see with the present Railroad Commission is, they are too lazy; they do not earn their salary, sometimes. In some States, there is a Commission appointed by the Governor, which is removable at the pleasure of the Executive. Perhaps the best thing

that could be done with the present Commission would be to provide for a Commission of that kind.

In New York, Delaware, and elsewhere, they have found the safest method for the people is to have a strong Executive, and to allow the Executive of the State or the Mayor of the city to have a large exercise of power in appointments. I do not know whether the people of California are ready for such an idea as that or not; but I, for one, believe in that doctrine, though it may seem to be undemocratic and unrepulican, but the history of each of the States, and the history of political government of this country, goes to show a prompt and better administration is frequently obtained by extending the power of the Executive in the matter of appointments, etc., giving him unreserved power of appointment.

EARL: The receipts of your road have fallen off the past years, have they not? A. In 1880, the receipts were \$115,000. Those were boom times of hydraulic mining. Now they are \$88,000.

Q. Then there is hardly any probability of striking the limit named in the amendment? A. It may, sir; it is now \$3,900.

SEAWELL: It would strike the 10 cent rate pretty hard, then.

BURROWS: The indications are business will revive, and it will strike the \$4,000 limit.

EARL: If there is any scheme revived? A. If hydraulic mining is revived, within five years thereafter the receipts would run up from \$88,000 to within \$100,000, and be then above the \$4,000 limit. We do not want to have this shadow resting on us all the time. It is not fair to start right in under a shadow such as this one. When you attempt to increase the business, if you attempt to develop your trade or improve, the effect will be hari-kari suicide. We have great hopes of our industries; there are thousands of fruit trees which have been planted out on the hillsides which are not yet in bearing, but from which the road expects great results by and by. Within two or three years we expect a large product from those trees. I will say then, further, we have very strong hopes that within a few years our income will be increased to such an extent, perhaps, that we may be able to pay a dividend, which we cannot do now.

THURSDAY EVENING, January 26, 1893.

MR. EARL: At the point of adjournment last evening, the Nevada County Narrow Gauge road had concluded its argument. I don't know whether Mr. Kidder has anything further to add to that or not.

KIDDER: Mr. Chairman, I have something further to add to the remarks of my attorney, but there are several representatives here at this meeting this evening who wish to get away. Mr. Martin has a list of the roads in order in which they will appear, and I am willing to stand aside for the roads anxious to get away.

EARL: The Yreka road; is that represented?

MR. H. P. GILLIS.

Representing the Yreka road, addressed the committee as follows:

Mr. Chairman, and Gentlemen of the Committee—I have been selected by Mr. Churchill and the other members of our Board of Directors to present what little we have to say to-night. I am here to represent in part one of the smallest roads in this State, one of the shortest roads; in the way of wealth a poor one, probably the weakest road in the State of California. We did not particularly desire to build this road, Mr. Chairman; it was rather built under protest than otherwise. We were so situated that on coming up there the Southern Pacific Railroad would pass about eight miles to the east of us. Surveys were made, but after several conferences with the Southern Pacific officials it was not thought practicable to pass through our town, and that leaves us about eight miles off the line of the main road. The place where the Southern Pacific proposed to build a depot was not pleasant, so the people of Yreka got together (Yreka being a town of between 1,500 and 1,800 people) and concluded to make an effort to build a road themselves, calling on the best of the community to devote their business capacity to further the enterprise, not for the purpose of money speculation, but to save the homes of those villagers from coming down about their ears, to prevent the enterprising members of the village from moving away to other places for homes. With that end in view, they selected as one of the Board of Directors one of the attorneys of Yreka, and the others were the best business men of the town. The company was organized and right of way secured, and the road built, with the assistance of the townspeople, who contributed about \$50,000 in cash, and going in debt about \$50,000 more. The Board of Directors has served from the organization of the corporation to the present time, and notwithstanding we have had some complications, we have never paid \$250 for attorney's fees from that date to this. The Board of Directors has contributed its services, and from the commencement it has been a great expense to them. Those are the circumstances under which the road was built. None of my people have ever appeared before the Legislature before, but this bill compelled them to come here; that if it was passed it would cause our engine and car houses to become empty and deserted barracks; it would destroy the property, and to a large extent destroy the homes that the property was built to save, for by the bill it was found that for passenger rates they were allowed but 2 cents per mile, and with the consent of the Legislature, 3 cents, while at the present time they are charging 8 cents. For freight rates the bill would allow but 3½, 4, and 4½ cents, while at present they were charging 7½ cents. And with these rates of charges, and this service on the part of the Directors and managers, the road never paid a dollar, and they never expected it would; it was only with the utmost effort they could pay expenses.

Notwithstanding my road was not included in the class earning \$4,000 gross earnings per annum, we still object to the bill as it stands at present. If the bill should become a law, giving the Legislature power to fix rates of freights and fares, bills would be constantly coming requiring the presence of some of our Directors here all the time to look out for their interests; there would necessarily be many complaints from both railroads and others in regard to rates; changes, alterations, and

modifications would constantly be requested. We are not able to send a representative here, and keep watching the affair all the time, to see that our interests are not sacrificed. I also object to the bill because I consider that the bill, if it should become part of the fundamental law, would deal with a subject of this character as it should not be dealt with. The honorable Senator who introduced the bill, and whose name is appended to it, in speaking to the committee said he would hesitate before he would chance a bill of this character, without placing in that bill a limit beyond which the Legislature could not go. I ask that the matter be most carefully considered; that the members were not here as representatives of the railroad companies, but of the people of the State of California, whose sworn duty it was to look out for their interests. And if the author of the bill is unwilling to chance the bill without fixing in the constitutional amendment a clause beyond which they cannot go, I ask a most careful consideration of the proposition. While they cannot make them go beyond 3 cents for hauling passengers, they may make them haul for 1 cent. In other words, there should be a saving clause for the railroad companies, as well as for the people of the State. I consider the cost of construction should be taken into account in basing the rates for freights and fares, but the bill merely classifies into two classes, those earning gross over \$4,000 per annum, and those earning less, making no provision for the costly operations of roads having streams to cross which overflow in winter, others having heavy mountain grades, but classifying all alike, whether valley or mountain roads, taking only the gross earnings into consideration. I submit for the consideration of the committee, whether or not this Act becomes a law, I desire to say for my own railroad company, that in my humble judgment it would be unfortunate for the railroads of the State, and also for the Legislature of the State, which latter for years has professedly been trying to keep the railroads out of politics, and now they not only invite but absolutely command the railroad companies within the State to come forward and hold sessions biennially. It would inject the unhappy state of affairs in regard to our political machinery of bringing back with all the unfortunate circumstances surrounding it not only one railroad, but all the fertile railroads within the State, and necessarily forcing and keeping them there. The matter would be better conducted by a Commission who would fairly and conscientiously perform their duties; better by a Commission of three, five, or smaller number, who have a special knowledge of the subject, much better than by one hundred and twenty men coming together biennially and only having sixty days to perform the duties. I consider, with all the complications thrown around the business of freights and fares, it is a good deal more than it could do in sixty days so as to stand the test of two years following. With my own road, while the smallest in the State, and least complicated interested of all roads in the State, the Board of Directors meet every month. In their monthly meetings they take into consideration, certainly every few months, the rates and fares, and there was no time yet they did not make some alterations, modifications, or changes of the rates of freights and fares; they were absolutely required to make changes every few months. How would it be possible for the Legislature, with all the complicated ramifications of all these vast roads, to enter into the duties and perform them as well

as they should be done? The above I respectfully submit to the consideration of the committee.

BURKE: What is the length of your road?

GILLIS: A little short of eight miles.

Q. What is the gross earnings? A. Gross receipts per mile, \$1,600.

STATEMENT OF D. A. BENDER.

(Representing the Carson and Colorado Railroad.)

MR. CHAIRMAN: I ask the indulgence of the committee in this: that the brief statement I will make was prepared before the present amendment eliminating the short roads was offered, and that I have not had the time to revise my statement accordingly.

The Carson and Colorado Railway Company, an incorporation of the State of California, operates a line of narrow gauge railroad starting from its connecting point on the Virginia and Truckee Railroad, in the State of Nevada, to the town of Keeler, on Owens Lake, in Inyo County, California, a distance of two hundred and ninety-three miles, to which point it was built in 1883—one hundred and eighty-five miles of the line being in Nevada, and one hundred and eight miles in California.

This railroad property was bonded at the rate of \$15,000 for each mile of road constructed, equal to \$4,380,000 in bonds for the two hundred and ninety-three miles, same bearing 6 per cent per annum interest, making an interest charge to be earned in addition to the earnings required for operating and taxes, of \$262,800 per year.

The company during the past ten years has been able to earn a small surplus above the amount required for expenses of operation and taxes, but not enough to make much of an impression on the amount necessary to meet the annual interest charge of \$262,800, for it found itself on July 1st last behind in unpaid interest coupons due to the bondholders, something in the neighborhood of a million and a half of dollars.

The steadily increasing sum of unpaid and unearned interest finally became such a "specter" as to call for relief, and in August last the property was decided to a new incorporation, under an arrangement with the stockholders and bondholders whereby they surrendered their bonds and shares of stock in amount \$4,380,000 each for \$2,000,000 in bonds bearing but 4 per cent per annum interest, and running for a period of fifty years—thus reducing the annual interest from \$262,800 to \$80,000, a difference of \$182,800. When this action was taken it was confidently expected that the new company would be able to earn annually this low interest charge of \$80,000 per year; less, by the way, than 2 per cent per annum on the actual cost of the property; but its expectations have proved to be—from the decreased traffic enjoyed—again most disappointing, as its earnings for the past twelve months, ending December 31st last, have been but \$45,000 in excess of the amount required and paid for operating expenses and taxes—but little more than 1 per cent per annum interest on the original cost of construction and equipment.

Let us now see what this company does for the State and county governments to which it is compelled to contribute support in the shape of taxes. Last year—1892—its gross earnings were about \$210,000—but

about \$700 per mile of road operated. Operating expenses, \$137,000, about 65 per cent. Taxes, \$28,028, or about 83 per cent, altogether, of the earnings for operating and taxes. Here we find 13½ per cent of the gross earnings of this railroad paid to the State and county governments of Nevada and California for taxes.

A passenger rate of 2 cents per mile is proposed by the bill before this committee, which, if enacted, would be a reduction of about 4 cents per mile, our rate now being an average of about 6 cents per mile. The reduced freight rates also proposed by this measure would give us in some of the principal commodities we now carry a rate of 6 cents per hundred pounds, where we now charge and receive 25 cents per hundred pounds. Now, it can be readily understood that we could not, under such ridiculously low rates, carry passengers and freight except at a positive loss.

It is proposed to place all roads in the State under the exactions of this law, regardless of the cost of construction and operating of the different roads.

This is manifestly unjust, and discriminates with great severity against such lines, which, by reason of their distance from tidewater, and their great cost of construction, cannot be operated as cheaply as roads running mainly through the level and populous valleys of the State.

As an illustration: The Carson and Colorado Railroad paid to the Southern Pacific Railroad Company, and the Virginia and Truckee Railroad Company, its connection roads, in the neighborhood of \$200,000, freight charges on the material, rails, ties, locomotives, etc., used in its construction. Is it not apparent that this and other additional cost items of construction of its railroad, over other railroads affected by this bill, should be considered in the application of lower freights and passenger rates, and that failure to consider such items, forming part of the cost of construction, is discrimination of the most pronounced type?

Who calls for the rates proposed to be put in force on this railroad line? Has any citizen or taxpayer in Mono and Inyo Counties, through which the road runs, appeared before this Legislature, and complained that the rates of fare and freight we charge and collect are greater than what is reasonable? Has any patron of the company made known anywhere the fact that he is not satisfied with its prevailing rates? None.

It may be said that the bill before us affects only the local traffic in the State of California. To this we say that such local traffic is an important factor in our revenue, as the line in California through the fertile Owens Valley gives us the best local business we have on the entire line.

Note.—Average freight rate on through and local freight business for year ending June 31, 1892, .0520 per ton per mile. Average cost, not including taxes, per ton per mile, .0360.

Passenger Traffic.—Average rate per mile per passenger, .0546; average cost per mile per passenger is more than what was received.

Since preparing the above matter, I find that the amendment now before this committee does not affect the Carson and Colorado Railway Company in its present condition. Notwithstanding, it does affect its future prospects.

The builders of this property, all of whom are either residents or heavy taxpayers of the State of California, certainly anticipated, when they invested their own personal funds in its construction, that its earnings would reach \$4,000 or more per mile. The Virginia and Truckee Railroad, with which it connects (and whose owners control in a measure the Carson and Colorado), for the year ending June 30th last, earned in the neighborhood of \$10,000 per mile, hence it could have been no stretch of the imagination to have anticipated that the per mile earnings of the Carson and Colorado would reach, say 50 per cent of the per mile earnings of the Virginia and Truckee. And further, we do not now believe that it will be possible for the Carson and Colorado Company ever to earn the sum per mile which will place it within the restrictions of this proposed amendment.

I have already shown you that the operating expenses of our company for the past twelve months reached 83 per cent of its gross earnings, and it is probable that this percentage would not go much below 75 per cent (the bulk of our freight being mineral products, handled at minimum rates), in the event of our per mile earnings reaching \$4,000 per annum, which would give us say \$1,000 per mile net earnings. Now I claim, Mr. Chairman, that this sum would not compensate the owners of the property for their investment, as the property has been operated long enough to require a considerable portion of said net earnings for depreciation—arising from the wearing out of its rails and equipment—no charge having ever been made against such depreciation since commencing operations in 1883.

Hoping, and ever anticipating, as we do, that the future will yet bring us reasonable returns for our investment, we object to the amendment before the committee as “handicapping,” if I may use the word, our efforts to secure and create greater traffic, knowing that if we should succeed, our apparent success really would result in disaster.

Our people have in contemplation the extension of its line to a connection with the trunk lines of railroad now running and to be run to Southern California, whenever it appears to them that such extension would be a good business proposition; but I can assure this committee that they will not, in my judgment, entertain the matter of additional investment for such extension, should the amendment proposed be accomplished.

Thanking you for your attention, I will be glad to answer any questions the committee desires to ask.

MR. EARL: Is there any one present representing the Colusa and Lake Railroad?

STATEMENT OF MR. E. W. JONES.

MR. JONES: We have here this evening the Superintendent of our railroad, and I rather expected he would address the committee. It is the first instance on record where his modesty overpowered him. I certainly thought he would open the ball at any rate. Not being an attorney, and our company not being able to afford the luxury of one, we shall not attempt to make any great argument, but leave that entirely to the gentlemen on the committee. We believe they are better able to

judge as to matters of that sort, having several prominent attorneys on the committee.

I will proceed in as concise and few words as I can to give you a business-like statement of the conditions of our road, and leave you to judge whether or not we can operate under the provisions of this constitutional amendment, as proposed. Like the gentleman who preceded me, or opened the argument this evening, I might say our road was also built more from necessity than choice, and at least one of the members of your committee is probably aware of that fact—I refer to Senator Hart. He probably is familiar with the organization and construction of our road.

In 1885, the general line of the Northern Railroad having been surveyed, the road, if built, would pass our place, leaving us some ten miles off the line of the road, and it became necessary that we should have railroad communication with the outside world. For this reason we organized a company of business men and farmers along the line of our road, each taking stock to the extent of his ability. Many of our stockholders are men of limited means—not capitalists—and not men who want to operate the road at a loss, even if they were able to do so. We constructed our road at a time when the materials which enter into the construction of a road were very cheap. We bought our rails at a low price; I believe we paid \$35 per ton in New York. We paid \$10 freight from New York to San Francisco by way of the Isthmus, and \$15 over the Sunset route—about as cheap freight as any railroad ever had the advantage of. We contracted for grading, and trestle, and other work at the lowest possible prices; I believe the highest price we paid for any grading on our road was 12½ cents per cubic foot, which was certainly very low, taking into consideration that on some portions of the road there was considerable rock work and blasting to be done. Our road cost us in the neighborhood of \$200,000. It extends a distance of twenty-three miles. The Board of Directors of that railroad have served up to this time without one cent compensation; no officer has a salary, with the exception of the Superintendent, who receives \$1,200, and the Secretary, who receives \$180 per annum. We pay our engineers from \$60 to \$90 per month. Conductors receive \$60, and all of our train men in the same proportion. I do not think there is a railroad in the State that is run as economically as the Colusa and Lake Railroad.

And yet, with all these things in our favor, and our road costing us less than \$10,000 per mile, and with its bonded indebtedness of about \$3,000 per mile, we have never yet been able to pay a cent in dividends. The stock of the railroad to-day, if sold at all, would not bring 20 cents on the dollar. In fact, that was about the price the last stock was sold at. At the present time, and from the time the road has been in operation, we have been charging 8 cents per mile for passengers, and from 5 to 10 cents per mile for merchandise, according to the classification, on the different classes of merchandise hauled over the road.

Now, gentlemen, if with that sort of showing and that cost of road we cannot pay a dividend, and but little more than our operating expenses, I would like to have the committee tell me what we are going to do if you reduce fares to 2 cents and freight to the basis proposed in this constitutional amendment. We would simply have to lock up our railroad and stop running, or turn the road over to the bondholders for the \$70,000 that we owe. The net income from the road, after paying

interest on bonds, was \$6,500, and that was the best year we have had since the road was running. This would amount to a little less than 3½ per cent interest on the capital invested. Certainly the committee will bear me out in the assertion that this is as reasonable a rate of profit as any rate. It has been said that this amendment which is proposed—the provision being 2 or 3 cents per mile to railroads earning more than \$4,000 per mile—would not affect a road of our standing; but as I understand, the original bill is still before this committee; it never has been withdrawn. We are not aware and do not know what bill this committee will report, and it is proper and in order for us to argue on that basis. It is liable to fix rates at 2 cents per mile.

GESFORD: With the permission of the gentleman—the idea was, if it was not stated in specific terms, to consider the other bill as withdrawn; this was proposed as a substitute for that bill, or that resolution. The proposed substitute would provide for 3 cents instead of 2 cents; this bill is proposed in lieu of that bill. That is the idea, that the other bill is withdrawn.

EARL: I understand the Senate has referred to this committee the consideration of original Bill No. 8, called "Constitutional Amendment Bill No. 8;" that at the hearing Monday night, you also, at that time, prepared what you designated as "Committee Substitute." In case we desire to act favorably on a bill that we can refer that one back, if we see fit to adopt. It may be the desire of the committee to report back the original.

GESFORD: Yes, but I understand the committee have reported back the substitute to the Senate; so it was passed to print and referred to the committee.

EARL: Yes, but the original.

GESFORD: But the proponents of this bill, do not insist on the original bill, but of course the committee have that within their discretion. The proponents, however, do not insist on the original bill as proposed at all.

JONES: Even with that understanding of the bill, the railroad at the present time might possibly be enumerated under the 2 or 3 cent provision. But it is not the intention of the incorporators and the gentlemen who are operating our railroad to let it stand where it now is. There is a large amount of business we are reaching out for in the valleys and timber lands, and we hope to bring in settlers. Add to this, the fact that our own town of Colusa, has planted something like five thousand acres of orchard—those trees are just beginning to bear, and of course we expect to receive a large amount of traffic from that.

EARL: Your gross earnings are how much?

JONES: \$1,200 per mile. Add to this the extension of our road, which we are liable to make at any time, and the constant development of the country along our line, and you can very readily see we might before very long come in that class, and probably be in that same situation that the Nevada County Narrow Gauge is; in other words, if we increase our traffic, we get less revenue. I believe that the Constitution of the United States guarantees to every citizen life, liberty, and the pursuit of happiness. Now so far as life and liberty are concerned, it might be that a corporation, after a constitutional amendment like that under consideration became a law, might still live; but if any one thinks he will have any happiness in running a railroad at 2 or 3 cents a mile,

he had just better get in and try it; I think he will find he is sadly mistaken. I presume our road may be one that Mr. Leeds characterizes as a "bad investment." We might have made a bad investment; but if we made a bad investment we don't want it all taken away from us. We are fighting for our lives.

If there are any questions your committee would like to ask and wish answered, I shall be pleased to do so.

STATEMENT OF J. M. FULTON.

(Representing the Nevada-California-Oregon Railway.)

MR. FULTON: I represent the Nevada-California-Oregon road, an association of individuals of which Mr. E. Gest is Custodian and Manager. We hear a good deal about the "dear people," and people working for the "dear people," but I think I can give the committee a little illustration of what this is, in fact. In 1884, the proposition was looked over by the firm that now own the Nevada-California-Oregon Railway, as to building into Lassen County, and Modoc County, and Lake County, Oregon. They were without means or any way to market anything that could be produced in a good agricultural and stock-raising country. The laws of the State of California were looked into as regards the maximum rates permitted to be charged for freights and fares. The situation was taken in as any good business man would naturally look it over, and our people outside of the State, doing business in the State of New York, concluded to make an investment and build a railroad in the State of California, starting from Reno, Nevada, and traveling in a northwesterly direction to the Nevada State line; going thence about four miles to the summit of the Sierra Nevada Mountains at Beckwith Pass, and northerly fifty-two miles in the State of California into Honey Lake Valley, to a point known as Amadee. The actual amount of investment in the construction of the road to this stage exceeds \$1,000,000. There is no stock or bonds. The road does not owe a dollar. It is not incorporated. The expenditure to this date, as I said before, exceeds \$1,000,000. The road has never paid its owners a penny. Our expenditures for the calendar year 1892, were \$110,423 10. Our income from all sources was \$74,463 82. For betterments there was used \$10,590, showing a loss in operating the road of \$25,369 28. We have experimented on the proposition of giving the people a very low rate, trying to develop the country, and see if we could not get returns in that way instead of charging a higher rate. The maximum rate, as allowed by law, as we found in 1884, is 10 cents a mile for passengers, and 15 cents a ton a mile for freight in the State of California, upon which we based the making of the investment, but this rate has never been used.

Our passenger rates have never been 7 cents a mile, and our freight rates have never been 10 cents a mile, on any article. Our passengers between all stations for the calendar year 1892 were seven thousand seven hundred and ninety-five; average number per train, twelve. If Mr. Leeds were here he would bear me out in the proposition, that it would not have cost any more to haul fifty than it does twelve. The average distance each passenger was carried was sixty-one miles.

The receipts from each passenger were \$2 67. The receipts per mile from each passenger were 4 cents. The total number of tons of freight of all classes was fourteen thousand five hundred and eighty-eight; the average tons in each train, twenty-three—a very light load for an engine, but you have got to go. The average distance hauled one ton was sixty miles. The receipts from each ton of freight were \$3 16; per ton per mile, 5 cents. We find that the portion of the road that was constructed in 1884, 1885, and 1886 shows signs of decay; our bridges are costing a great deal of expense, and our ties are about gone. In maintaining this year we have met with the heaviest expense we have in any previous years. The ties rot. Mr. Leeds seems to doubt that. He thought, with the climate we have here—he thought we did not have snow or any of the elements to contend with, which they did in Kansas—that it was very much cheaper to operate a road here. We get five or six or seven feet of snow on the level in parts of Lassen County, near the summit of the Sierra Nevada Mountains. We spent, in the hard winter of three years ago, \$8,000 to haul \$500 worth of hay to the starving cattle of Lassen County, in trying to open the road from the snows. We did not do this for the cattle. I am not making any such assertion as that; but in trying to operate the road and haul business that might be offered; but we have had no winter business to speak of in the past years. It would have been a business proposition for us to have closed the road in the month of November, and let all engines stand in the roundhouse until the month of April; but as people had settled on the line of the road because the railroad was there, we felt if the road was worth having at all, it was worth operating through the entire year. I spoke of the decay that constantly takes place on the road. Our fences rot just as fast, and go just as fast if we run one train each way a day, or one train a week, as the road that runs one hundred. The storms come and do us the same damage. Our banks wash away and our ties rot, and in many other respects these expenses connected with a railroad are the same, whether the trains are many or few.

You have the right of way to take care of, which is the same whether trains are many or few. We might cheapen our service. We might hire cheap men—incompetent men to run the trains, as they did in Wisconsin and Minnesota. I was there at the time there was a pressure of economy brought about by adverse legislation, that caused the property of the Milwaukee and St. Paul Railroad to run down, to the detriment not alone of the stockholders of the different lines, but the people as well. We had a survey made and estimates carefully prepared, ascertaining the price of steel rails, which the entire line is laid of, as we thought of extending the road into Modoc County, California, which I believe is the best undeveloped country in the United States. I believe it is the best undeveloped country. Our folks did not build the road for charitable purposes, but with the hope, and they have been running it with the hope that, with the proper development of the country, it would be a splendid piece of property. Our income last year, for the thirty miles, was \$74,000. If we were to build into Modoc County and extend the line one hundred miles, that county would develop and make homes for so many people that our earnings would very soon be \$4,000 a mile.

It would not be profitable for us to make it \$4,000 a mile, and if we did make it \$4,000 a mile, and if we were so disposed, we could cover it

up from getting out, as Mr. Leeds might do it. We are brought up in the face and eyes of the fact that this proposed amendment, which Mr. Leeds has found a gentleman, representing the State of California, to introduce, will take from us the little we have now got, by bringing our good money from another State and investing it in California. Mr. Leeds said here Monday evening he could not get the data necessary to state what was right in regard to the smaller roads in the State of California. Mr. Chairman, and the gentleman who introduced this bill, you well know, and Mr. Leeds knows, that each and every one of us has a sworn statement on file with the Railroad Commissioners of the State of California, which is open for inspection by any one. His assertion that he could not get the data from which to find what would be just, is not sound. A bill or amendment to the Constitution, taking away the right to make a reasonable interest on an investment, after paying ordinary expenses, is dangerous; it is discouraging to capital; it will not bring capital to the State; it will make the capital get out of it as soon as possible. I will say right here for our road, and it can be distinctly and absolutely and plainly understood, that it is a fact that we would not extend the road one mile, nor spend one dollar, while this class of legislation continues, under no circumstances. On the contrary, we will part at a great loss with what we have and gladly withdraw. I never saw Mr. Leeds; I never met the gentleman. I had read of him a great deal, and he was great in the newspapers, but when I came here and heard him talk and make his assertions in regard to railroads, claiming to be an expert, I was much disappointed. The statement he made in regard to the consumption of fuel in the State of California, being very much less than it is in the Eastern States, is not at all sound. I do not understand it, but I would be pleased to argue the subject with him. He said, as a matter of economy that could be exercised by the Southern Pacific Company—a bright idea advanced by him was, that they could lessen their operating expenses by taking the old ties, after they were rotted and worn out, and use them for fence posts. We are a narrow gauge road; the ties are only five feet long, and I want the gentlemen now assembled in the Legislature to know, when the time comes to canvass this bill under consideration, that the ties are surely not long enough for fence posts. We cannot take rotten ties and make any particular use of them. I do not know anything else that I need detain the committee with; if there are any questions, I am ready.

MR. FULTON: I want to speak of the expense of constructing railroads in California. Steel rail, free on board cars in the East, cost \$29. The last rails we purchased for the construction of our road, in San Francisco, cost \$55. We have found that the Pacific Rolling Mills people, or the people we buy from in San Francisco—many of them members of the Traffic Association, and becoming well posted on the proposition of freight rates—quote us the Eastern price with freight added from Eastern countries to San Francisco. When it is necessary for us to buy materials for the construction of our roads, we find the prices prevailing in San Francisco are the Eastern prices with freight added, or "all the commodity will bear." By the amendment to the Constitution proposed—we do not like to take the medicine; but taking lumber, shingles, laths, etc., for a distance of fifty miles, the present tariff is 12½ cents per one hundred; by the amendment, 5 cents. Flour, wheat, etc., 24 cents

at present; by the tariff in the amendment, 6 cents. That is the justice of the amendment. It was intended that Mr. Leeds, with his \$10,000 a year, intended to do justice to the railroads of California. Barley, rye, oats, etc., present 20 cents; by the amendment, 5 cents. Bricks, sand, etc., present, 10 cents; by the amendment, 4 cents. Our first-class rate for one hundred pounds for fifty miles is 40 cents; by the amendment, 27 cents.

MR. DOLBERE here arose and asked: "Does this bill include all roads using rails and locomotives?"

CHAIRMAN EARL: I cannot say; you must judge.

MR. DOLBERE: There are forty or fifty roads that have steel rails and haul goods. Some unincorporated, and some are common carriers.

MR. EARL: Do you mean the logging roads?

MR. DOLBERE: Yes, sir; our firm is the half owner of one. Can't the author of the bill tell us if we are taken in?

[Mr. Dolbere was told that he must judge of that. The committee was not there to reply, but to hear.]

MR. KIDDER: Yes, sir; and there is the Towle Bros' road, twenty miles long. It carries freight. Bring it in and cinch it too.

MR. EARL: Mr. Dolbere, do you refer to the Mad River road?

MR. DOLBERE: No, sir; to a Eureka road, and to others, two of which I am interested in.

The Committee here adjourned until Tuesday evening.

STATEMENT OF K. H. WADE.

(Representing Southern California Railway.)

To the honorable Chairman and Gentlemen of Senate Committee on Corporations:

GENTLEMEN: Representing the interests of the Southern California Railway—Santa Fe route—I respectfully ask your consideration of the following points bearing on the proposed constitutional amendment relating to "freights and fares:"

We believe the construction and operation of railway lines is a matter of mutual benefit for the owners as well as the general public, and that persons who have invested in such property are entitled to the same consideration and protection as if their capital was invested in other enterprises; we therefore trust your honorable body will decline to entertain the proposed amendment, and respectfully call your attention to some of the important facts herewith stated.

The owners of this Southern California Railway Company have invested over ten millions of money in its construction and operation, and have just begun to receive a portion of the interest on fixed expense in return; they have received no benefits from subsidies or land grants, which could be utilized for the benefit of this company; the rates of interest, State, county, school, and irrigation taxes, have been higher than in the Eastern States.

The population in the six southern counties is not over six persons per square mile; in Kansas it is thirty-eight, while in Illinois it is sixty-seven. The proportion of this territory available for cultivation

in Southern California is not over one third of the total area, while in Kansas and Illinois at least 90 per cent of the entire country can be tilled to advantage.

The construction of these lines of railway was undertaken under many difficulties, and the promoters are certainly entitled to protection. The roads were difficult to build and costly to maintain; the percentage of heavy grades and sharp curves are double that of any line in Illinois or Kansas. The future requirements for additional facilities and equipment will require large expenditures, the same as any other industry, and this expense must be met by increased earnings.

The maintenance of railways in this territory is much more expensive than in Illinois or Kansas. Repairs on account of floods and washouts will average \$100,000 per year, and will continue to be a great expense for many years. Most of our line requires ballasting, the soil being of such a nature that in wet seasons the road becomes almost impassable; some fifty miles have already been treated in this manner at an average expense of \$1,500 per mile, and the entire road must be ballasted before the track can be maintained economically. Modern equipment must be added at heavy expense from time to time as business interests require; this is specially the case as regards the fruit and vegetable traffic to the East. The operation of our railway shows largely increased cost over those in Kansas or Illinois. Fuel is one of the largest items.

The Wabash road in Illinois shows cost of fuel, 4 cents per ton per mile; Atchison, Topeka, and Santa Fe road, as a system, most of their lines being in Kansas, cost 7 cents; Atlantic and Pacific, 8 cents; Southern California Railway, 24 cents. As compared with Illinois roads, increased expense on Southern California Railway equals 20 per cent of gross receipts, or, in round numbers, amounts to \$1,000 per day; general labor expense is, at least, 30 per cent greater than in Illinois. The comparisons with Kansas would show about 25 per cent, or \$750 per day, increased cost for fuel in Southern California, and 25 per cent more for labor. In the matter of traffic, our records show: In Kansas, average distance freight hauled was two hundred and thirty-seven miles; on Southern California Railway, ninety-one miles. Distance passengers hauled: Kansas, sixty-eight and eight tenths miles; Southern California Railway, thirty-five and six tenths miles. The Wabash Railroad, in Illinois, loads each day an average of one car per mile of road; Southern California Railway averages one car to each five miles of road.

The rates proposed, as we understand them, would in many cases bring the rates below actual cost for performing the service. Our result for the past year shows as follows: Average revenue, all freight traffic, 2.71 per ton per mile; average cost, all freight traffic, 1.67 per ton per mile. Cost does not include extraordinary expense of improvements, additional facilities, new equipment, handling company freight, such as coal, ties, timber, etc., which would amount on an average to 50 cents per ton on the year's business, leaving only .0054 per ton per mile to apply on interest and other fixed charges. Average revenue, all passenger traffic, .02672 per mile; average cost, all passenger traffic, .02615 per mile, showing apparent net of .0057 per mile. The same conditions exist regarding extraordinary expenses, in the freight traffic.

The proposed rate is 23½ per cent less than Kansas rate for our average haul of ninety miles, and also averages less than Illinois.

Expense for protection against fires and claims to be settled on this account is no small item. Expense in holding trains down the heavy grades should be considered, as well as the extra power required to haul trains up the grades. The average train load in freight service in Southern California is not over three hundred tons, while in Illinois or Kansas the same power would haul at least six hundred tons. I speak of the Wabash road from the fact that I was engaged with that company for twenty-five years in various capacities, from operator to General Superintendent, and only state what I know to be facts. We have no complaints regarding rates in Southern California, to my knowledge, and believe existing conditions are satisfactory. I attach copies of comparative statement as between existing tariffs and the amendment proposed, and trust you may realize the equity of our claims for largely increased rates over those enjoyed by the thickly settled States in the East.

As the volume of business increases, and competing lines develop new country, we must expect to reduce rates. The Santa Fe system has carried the Atlantic and Pacific line for years at an annual loss of over \$1,000,000 per year, trusting in the future development of this country, and believe they have a legitimate claim upon the kind consideration of your honorable body—and in view of the satisfactory relations existing between our company and its patrons in Southern California, we trust no action will be taken which would lessen our revenues, or prevent us from providing desirable facilities, and advancing the development of this territory. The Railway Commission in the State of Illinois, under which I operated for years, was put in effect under a law adopted in 1871, and has, I think, given the most general satisfaction, both to the public and to the railways, of any system which has come under my notice. All of which is respectfully submitted.

I will submit the following statements:

Comparison of Freight Rates as between Southern California Railway, Kansas and Illinois Distance Tariffs, and Proposed California Amendment.

Miles		Maximum	First	Second	Third	Fourth	Fifth	A.	B.	C.	D.	E.
5	So. Cal. Ry.	3	3	3	3	3	3	3	3	3	3	3
	Kansas	3½	13	11	9	7	6	6	5	4	4	3
	Illinois	13.16	11.28	9.40	7.52	6.01	4.70	4.23	3.76	3.29	2.96	3
	Amendment	3½	3½	3½	3½	3	3	3	3	3	3	3
10	So. Cal. Ry.	7	7	7	7	7	7	7	7	7	7	5
	Kansas	7½	15	13	11	9	7	6	5	4	4	3
	Illinois	15.04	13.16	11.28	8.46	6.76	5.64	5.17	4.23	3.76	3.46	3
	Amendment	4½	4	4	4	3½	4	3½	3	3	3	3
15	So. Cal. Ry.	11	11	11	11	11	11	11	10	9	9	7
	Kansas	11½	18	15	13	11	8	8	7	6	5	4
	Illinois	16.92	15.04	13.16	9.40	7.52	6.58	6.11	4.70	4.20	3.59	3
	Amendment	8	7	6	5	4	5	4	3½	3	3	3

COMPARISON OF FREIGHT RATES—Continued.

Miles		Maximum	First	Second	Third	Fourth	Fifth	A.	B.	C.	D.	E.
20	{ So. Cal. Ry. Kansas Illinois Amendment	15 20 18.80 12	15 20 17 16.92 10	15 15 14.10 9	15 13 10.34 7	15 9 8.27 5	15 9 7.05 6	12 8 6.58 5	11 7 5.17 4	11 5 4.23 3	8 4 3.81 3	
30	{ So. Cal. Ry. Kansas Illinois Amendment	22½ 24 22.56 18	23 21 19.74 14	23 19 15.98 13	23 15 11.98 9	20 11 9.58 7	20 11 7.99 8	16 9 7.52 6½	15 8 6.02 5½	15 6 4.70 4½	9 4½ 4.23 3½	
40	{ So. Cal. Ry. Kansas Illinois Amendment	30 28 26.32 22	30 25 21.62 18	30 21 17.86 16	30 19 13.16 13	26 13 10.52 8	26 13 8.93 9	20 10 8.46 7	18 8 6.58 6	18 6 5.08 5	12 5 4.57 3½	
50	{ So. Cal. Ry. Kansas Illinois Amendment	37½ 32 29.14 25	38 29 23.50 20	36 25 19.74 18	35 21 14.10 15	35 15 11.28 10	35 15 9.64 11	26 11 9.40 8	23 9 6.96 7	23 7 5.45 6	15 4.91 5½ 4	
60	{ So. Cal. Ry. Kansas Illinois Amendment	45 36 31.52 28	44 32 25.38 23	42 28 21.62 20	41 23 15.04 17	40 17 12.03 12	40 17 10.58 13	30 12 9.87 9	27 10 7.33 8	27 8 5.83 6	16 6 5.24 5	
70	{ So. Cal. Ry. Kausas Illinois Amendment	52½ 40 32.90 32	53 36 27.26 25	49 31 23.03 22	47 25 15.98 18	46 19 12.78 13	46 19 11.05 14	34 13 10.34 10	31 11 7.71 9	31 8 6.16 7	17 6½ 5.55 5	
90	{ So. Cal. Ry. Kansas Illinois Amendment	67½ 48 36.66 38	68 42 30.08 30	63 36 24.34 26	61 29 17.86 21	58 25 14.28 16	58 23 11.98 18	42 15 11.09 13	38 13 8.46 10	38 9 6.77 8	20 7 6.09 6	
100	{ So. Cal. Ry. Kansas Illinois Amendment	75 52 38.54 40	75 44 31.02 32	73 38 24.90 28	70 31 18.80 22	63 27 15.04 17	63 24 12.45 19	46 16 11.47 14	41 14 8.84 11	41 10 7.05 8	22 7½ 6.34 7	
120	{ So. Cal. Ry. Kansas Illinois Amendment	90 57 42.30 44	90 48 32.90 36	87 43 26.03 32	84 35 20.30 26	81 31 16.24 21	71 26 13.35 23	71 18 12.22 16	48 16 9.59 13	48 12 7.66 10	25 9 6.89 8	
140	{ So. Cal. Ry. Kansas Illinois Amendment	105 61 44.18 48	105 52 34.78 39	98 47 27.16 34	90 39 21.80 28	78 34 17.44 23	78 28 14.10 25	58 20 12.88 18	52 18 10.34 14	52 12 8.22 11	30 10 7.41 8	

ATCHISON, TOPEKA, AND SANTA FE RAILROAD COMPANY.

LOCOMOTIVE PERFORMANCE STATISTICS.

September, 1892.

Total miles run.....	2,309,909
Total miles run, exclusive of switch and work train.....	1,875,190
Total engines owned.....	834
Average number of engines on line (owned and rented).....	738
Average miles run per engine.....	3,130
Average number of engines (owned and rented), less switch and work.....	531
Average miles run per engine.....	3,531
Average number engines (owned and rented), less switch, work, and No. in shop.....	465
Average miles run per engine.....	4,033
Cost per mile run—	
For stores..... (cts.)	0.14
For oil and waste.....	0.28
For fuel—coal and wood.....	6.50
For engineers and firemen.....	6.59
For other attendants and help.....	1.40
For repairs.....	4.73
Miles run to one ton of coal.....	19.64
Miles run to one pint of engine oil.....	24.63
Miles run to one pint of valve oil.....	30.88
Miles run to one pint of illuminating oil.....	50.01
Miles run to one pint of lubricating oil.....	48.84
Miles run to one pint of all kinds of oil.....	19.09
Miles run to one pound of waste.....	13.73
Tons of coal used, 93,802,600; rated at.....	\$1 54
Cords of wood used, 2,221.14; rated at.....	\$2 16
Total mileage of road.....	4,706.77

October, 1892.

Total miles run.....	2,391,942
Total miles run, exclusive of switch and work train.....	1,974,671
Total engines owned.....	834
Average number engines on line (owned and rented).....	737
Average miles run per engine.....	3,246
Average number engines (owned and rented), less switch and work.....	593
Average miles run per engine.....	3,330
Average number engines (owned and rented), less switch, work, and No. in shop.....	481
Average miles run per engine.....	4,105
Cost per mile run—	
For stores..... (cts.)	0.14
For oil and waste.....	0.28
For fuel—coal and wood.....	7.36
For engineers and firemen.....	6.96
For other attendants and help.....	1.49
For repairs.....	4.19
Miles run to one ton of coal.....	21.02
Miles run to one pint of engine oil.....	22.83
Miles run to one pint of valve oil.....	32.84
Miles run to one pint of illuminating oil.....	53.05
Miles run to one pint of lubricating oil.....	44.69
Miles run to one pint of all kinds of oil.....	20.28
Miles run to one pound of waste.....	13.95
Tons of coal used, 104,784,800; rated at.....	100.44
Cords of wood used, 3,334.12; rated at.....	\$1 58
Total mileage of road.....	\$2 12
	4,706.77

November, 1892.

Total miles run.....	2,312,940
Total miles run, exclusive of switch and work train.....	1,911,239
Total engines owned.....	834
Average number of engines on lines (owned and rented).....	739
Average miles run per engine.....	3,130
Average number engines (owned and rented), less switch and work.....	603
Average miles run per engine.....	3,169
Average number engines (owned and rented), less switch, work, and No. in shops.....	498
Average miles run per engine.....	3,838
Cost per mile run—	
For stores..... (cts.) 0.14	
For oil and waste.....	0.27
For fuel—coal and wood.....	6.73
For engineers and firemen.....	6.79
For other attendants and help.....	1.50
For repairs.....	4.91
	20.34
Miles run to one ton of coal.....	22.92
Miles run to one pint of engine oil.....	35.22
Miles run to one pint of valve oil.....	54.52
Miles run to one pint of illuminating oil.....	38.74
Miles run to one pint of lubricating oil.....	21.40
Miles run to one pint of all kinds of oil.....	13.78
Miles run to one pound of waste.....	92.89
Tons of coal used, 100,924.1400, rated at.....	\$1 48
Cords of wood used, 2,540.1, rated at.....	\$2 07
Total mileage of road.....	4,706.77

ATLANTIC AND PACIFIC RAILROAD COMPANY

LOCOMOTIVE PERFORMANCE STATISTICS.

November, 1892.

Total miles run.....	337,418
Total miles run, exclusive of switch and work train.....	299,974
Total engines owned.....	95
Average number engines on line (owned and rented).....	110
Average miles run per engine.....	3,067
Average number engines (owned and rented), less switch and work.....	100
Average miles run per engine.....	2,999
Average number engines (owned and rented), less switch, work, and No. in shops.....	68
Average miles run per engine.....	4,411
Cost per mile run—	
For stores..... (cts.) 0.07	
For oil and waste.....	0.40
For fuel—coal and wood.....	8.04
For engineers and firemen.....	7.02
For other attendants and help.....	1.78
For repairs.....	7.42
	24.73
Miles run to one ton of coal.....	18.54
Miles run to one pint of engine oil.....	23.74
Miles run to one pint of valve oil.....	43.54
Miles run to one pint of illuminating oil.....	39.03
Miles run to one pint of lubricating oil.....	15.59
Miles run to one pint of all kinds of oil.....	11.15
Miles run to one pound of waste.....	92.47
Tons of coal used, 18,200, rated at.....	\$1 50
Cords of wood used, 152½, rated at.....	\$1 38.4
Total mileage of road.....	834

December, 1892.

Total miles run.....	297,700
Total miles run, exclusive of switch and work train.....	262,626
Total engines owned.....	95
Average number engines on line (owned and rented).....	113
Average miles run per engine.....	2,633
Average number engines (owned and rented), less switch and work.....	103
Average miles run per engine.....	2,549
Average number engines (owned and rented), less switch, work, and No. in shops.....	69
Average miles run per engine.....	4,314
Cost per mile run—	
For stores..... (cts.) 0.06	
For oil and waste.....	0.43
For fuel—coal and wood.....	9.31
For engineers and firemen.....	7.37
For other attendants and help.....	1.94
For repairs.....	8.65
	27.76
Miles run to one ton of coal.....	16.27
Miles run to one pint of engine oil.....	20.81
Miles run to one pint of valve oil.....	42.29
Miles run to one pint of illuminating oil.....	31.38
Miles run to one pint of lubricating oil.....	13.95
Miles run to one pint of all kinds of oil.....	9.65
Miles run to one pound of waste.....	76.16
Tons of coal used, 18,298, rated at.....	\$1 50
Cords of wood used, 397½, rated at.....	\$0 66½
Total mileage of road.....	834

THE WABASH RAILROAD COMPANY.

PERFORMANCE OF ENGINES, MONTH OF SEPTEMBER, 1892, MIDDLE DIVISION.

Miles of road operated.....	159
Total number engines.....	715
Number making mileage.....	141½
Average miles per engine.....	4,204.08

Engine Mileage.

Passenger.....	153,399
Freight.....	334,876
Switching.....	100,883
Working.....	4,038
Total miles run.....	593,196

Miles Run to—

One ton of coal.....	24.48
One pint lubricating oil.....	20.94
One pound waste.....	195.19

Cost per Engine per Mile, in Cents.

Repairs.....	2.99
Stores.....	.27
Fuel.....	3.80
Engineers' and firemen's wages.....	6.50
Dispatchers and cleaners.....	.87
Total cost per mile.....	14.43

TESTIMONY OF MR. F. T. PERRIS.

(Chief Engineer, Southern California Railway.)

MR. WADE: Our Chief Engineer, Mr. Perris, is here, and is more familiar with the construction of the road, the difficulties and obstacles to be overcome, than myself. He will be pleased to show you profiles, showing the mountain ranges we cross, and information of that character.

CHAIRMAN EARL: We will be glad to hear Mr. Perris.

MR. PERRIS: Mr. Chairman, and Gentlemen of the Committee—I have been associated with the California Southern Railway since its inception, a period of about twelve years. I am, consequently, more or less acquainted with the general characteristics of the road, as well as the history of its building; and, referring to the former, I may say that there is hardly any comparison between our system, composed as it is of a number of little branch lines, and the roads of Iowa or Illinois. We have a variety of topographical features blended over our entire system, from mountains at an elevation of about 4,000 feet to sea level. We have mountains, gorges, and other physical varieties of engineering to encounter which are not common to the roads of Iowa or Illinois. For instance, from San Bernardino to the Summit, a distance of only 26 miles, we have to overcome an elevation of about 2800 feet. On that piece of the line we have in the neighborhood of 18 miles of grade of 116 feet to the mile, and some 6 miles of grade of 158.04 feet to the mile. We have in the neighborhood, I suppose, of 10 or 12 per cent, or, in mileage, 490 miles of grades of 116 feet, and perhaps 40 per cent of our mileage is composed of grades of from 1 per cent to 1.02 per cent, and the balance is largely made up of lighter grades. There is comparatively little level country in all of it.

In regard to the history of the building of the road, as I said before, it was commenced about twelve years ago, not over, and the first extension was from San Diego to San Bernardino. The first one hundred and sixteen miles were built, I think, in the year 1882; following that up was a little extension made to San Bernardino, and later, Barstow. This made the first portion of the California Southern road, with its extension, known as the California Southern extension, a total distance of two hundred and ten miles. The California Central Railway was then formed, building a number of branches in various directions to serve the country in the future, and help in the work of bringing the three counties together.

At the time of the completion of the California Southern Railway, the business was all handled by a locomotive and about one car. There was no settlement to speak of from San Diego to Oceanside, and from Oceanside to Colton. I presume, a half a dozen houses would have covered the entire number of houses along the line of the road at that time. Subsequently, when the California Central Railway was inaugurated, the boom of 1887 followed, and with that boom came the development of Southern California from that time forward, resulting in the wonderful growth that is witnessed on every hand, and especially following the lines of our road. This development, of course, was not made without a very large expenditure of money, some ten million dollars making up part of the cost.

Among the disasters that have followed the building of this road, I may mention that of 1884, which devastated the Temecula Cañon, sweeping out the entire line from the head of the cañon nearly to the ocean, a distance of over twenty-five or twenty-six miles, carrying with it about fifteen miles of steel rail, five of which were never found, and are unfound to this day, and some twenty or thirty bridges, resulting in a pecuniary loss of about \$250,000. In other words, it cost about \$250,000 to reinstate that which had been washed away during this particular flood. There was a period of some eight or nine months during which it was exceedingly doubtful whether the people who owned the road would ever put the money back again in order to reinstate it, but finally they did so, with the result that again, a few years ago—two years ago, I think, it is now—another flood came, resulting not quite so disastrously as the first, still, devastating the country to the extent of requiring \$150,000 to now rebuild the cañon with a proper road. However, the line is not absolutely necessary to the traffic, because of the construction by the California Central of a line of road following the coast by the way of San Juan Capistrano, Santa Ana, and Orange, and around up the Santa Ana Cañon back to San Bernardino, making the line a little over seventeen miles longer than it was originally by the direct line through the Temecula and San Jacinto Cañons.

Within the past few years, notwithstanding the growth of the country, we have endeavored from time to time to increase our mileage by desirable little additions to our system. They have been made and resulted in development of the country, by reason of the showing we were enabled to make of their necessity to our system in order to reap the growth and development of the country.

I feel that if this bill—the one proposed—takes effect, that it will result in a total annihilation of the free and rapid development of the southern country, about which we promise so much. Mr. Wade has already given you the figures in relation to the business of the road, or at least he stated that they are at hand so that they can be had, and from those you will doubtless see that the stockholders as yet have had but poor return from their ten millions invested, except for the fact that they have developed the southern country to a very large extent; in fact, to an extent hardly appreciated by the people who live in the northern portion of the State.

I do not know that I can add anything more to what I have already said in regard to the physical characteristics of the road or to its operating as a feature in the development of the country.

TESTIMONY OF WILLIAM COLLIER.

(Attorney for the Southern California Railway.)

MR. WADE: Mr. Chairman, I will be pleased if you would listen to Mr. Collier, who would like to make some statements in regard to his experience in the State of Illinois and Iowa, on the effect of laws on the regulation of rates in those States.

CHAIRMAN EARL: We will be pleased to hear from you, Mr. Collier.

MR. COLLIER: Mr. Chairman, and Gentlemen of the Committee—I will only occupy a few moments of your time, in order to briefly call

your attention to something you may be already familiar with, but having been myself a resident of the State of Iowa, in a time something like this, the matter occurred to me at once upon my attention being called to these matters. In 1874, in the laws of the Fifteenth General Assembly, on page 1,861, you will find the result of an excitement something similar to this. The Legislature for that year adopted in that State a distance tariff and classification, and put it into the Statute Book, not in the Constitution. This matter was suggested to me by a question asked by one of the committee as to whether or not there was any precedent. I believe that the question, however, was confined to the matter as to whether or not there was any precedent for adopting into a State Constitution such a provision as has been proposed here.

This, of course, does not apply, as it was not in their State Constitution. It was simply a State statute of the State of Iowa. It was adopted in 1874. There had been a very exciting election preceding the adoption of this tariff, and both houses were enthusiastic for such legislation. It is complete here; it covers forty or fifty pages of this statute book. I presume there are others of this kind in other States, but this is the only one experiment of which I have any knowledge resulting from such legislation. It continued in force just four years. In 1878 they repealed this law so far as it applied to freights; they left, however, the passenger tariff stand, as it stands to-day, at 3, 3½, and 4 cents per mile. Being a resident, I might further say that, on the repeal of this statute, they adopted a Commissioners' law, providing for the appointment of three Commissioners by the Executive Council of the Governor and the heads of the other departments. That continued in force for some considerable length of time, and, since my removal to the State of California, some ten years ago, they provided for the election of these Commissioners by the people, as is done in the State of California. I remember very distinctly the result of this legislation in that State. It resulted in a complete cessation of railroad building in the State of Iowa, and other results that statistics will probably furnish to your committee. It was repealed without objection. The people of the State of Iowa were so well satisfied with it that it was done without a ripple on the public surface. I will endeavor to ascertain in the State Library here the mileage of railroads built some four or five years preceding the passage of this law, and the railroad building in that State during the pendency of this statute and the repeal of it. While I have not yet had an opportunity to get it, I will endeavor to furnish it to the committee before the close of your session.

MR. EARL: Have you compared the schedules there with the proposed schedule, Mr. Collier? A. I have not. I am not capable of making such a comparison. It is outside of my profession. It is here, all in detail, and complete, in this statute, which you can examine, or have comparisons made. I could not make such a comparison, because it is not within my experience. I stated this matter here because I believe it to be one of the best and most satisfactory arguments, especially to gentlemen accustomed to basing their conduct on occasions upon precedents. I believe it speaks louder in regard to the question of the expediency and propriety of legislation of this kind than anything we can suggest, to show an instance of this kind where it was tried and where it failed, and where they have returned again to the Commissioner system. And if you will examine the statutes of the State of Iowa since

that time, and especially the laws of the Twenty-second General Assembly, you will find the most recent legislation in that State upon this subject, where they have gone on amending, changing, and modifying, sometimes in the interests of the companies and sometimes in the interests of the people, these provisions regulating the action of the Railroad Commissioners, until they have made very decided advances in that particular direction, and so corrected the matter that the people and the railroad companies seem to be in entire harmony. I say this from my knowledge of the condition of things there, being a native of that State and still keeping up very friendly interests there.

MR. EARL: Has competition there not allayed this irritation more than anything else? A. I am glad you suggested that question. At the time of the adoption of this law, in 1874, as I now recollect, the Chicago, Burlington, and Quincy road extended clear across the State of Iowa in one tier of counties; the Chicago, Burlington, and Northern extended clear across the State in another tier of counties; the Chicago and Northwestern extended clear across in another tier; the Illinois extended nearly across in another tier of counties; and the Chicago, Milwaukee, and St. Paul road clear across in another tier of counties. I think all of these lines of roads reached from the easterly to the westerly line of the State, unless the Illinois Central, which was afterwards built. There was competition there. At the same time the Cedar Rapids road reached to the north of the State, running into Minnesota; the Central Railroad of Iowa reached from Ottumwa to the north line of the State; and the Keokuk, Fort Des Moines, and Minnesota reached from the Mississippi River to Fort Dodge; and other branch lines of road radiated out from these lines in every direction as feeders. Therefore, you will see there was active competition at the time of the adoption of this statute. Still, after an experience of four years, finally, to sum up, finding the unyielding condition of things under an arbitrary fixed statute made it impossible to adapt themselves to any conditions that arise between the meetings of the Legislature, the people and the railroads consented, because there was no objection to it—I remember very distinctly at the time—consented to wipe out that fixed tariff.

MR. D. FREEMAN,

Of Los Angeles, spoke for the Southern California Railroad as follows:

Mr. Chairman and Gentlemen: I appear before you not only as a representative of the Southern California Railway Company, of which I am a Director, but as a shipper and payer of freight to a large extent. To show you that I am interested in cheap freights, I will state that the freight I will have to pay during 1893 on the fruit, grain, and bricks from my rancho near Los Angeles will amount to about \$37,000. I contributed largely to the building of a railway from Los Angeles to the Pacific Ocean, which now forms part of the Southern California Railway system, and I have been for years doing all in my power to get a road built from the present terminus of either the Rio Grande and Western or the Union Pacific in southern Utah to Los Angeles. I should also be glad to see the Santa Fe system extended to San Francisco. I tell you these things so that you may know that I do not

speak as one having no experience and no interest in legislation pertaining to railways and freights.

I came to Los Angeles twenty years ago, when she had no railway connections with San Francisco or the East. I have seen that country grow from a barren plain covered by sheep and cattle to one of the most fertile, favored, and prosperous parts of the United States. And this prosperity and growth have been largely brought about by the building of railways connecting us by two great lines with the Eastern and Central States, and giving us four shipping points on the ocean, instead of but one, as in former days. Before the advent of the railways, I paid nearly \$5 per ton to put barley on board ship at San Pedro. I can put grain on board ship now for \$1 10 per ton. Therefore it is, that looking at all the benefits the railways have conferred upon California, and seeing that we need other competing lines, I think it unwise to pass any law that will cripple the railroads now in operation in this State, or prevent the building of the other lines we so badly need. In my attempts to get the road from Los Angeles to Utah under way, I have had to consult capitalists who might be induced to buy the bonds of the road; and there has been received from all of these men one universal answer, "The danger of unfriendly legislation and disastrous interference with freights and fares, render railway bonds an unsafe investment."

A gentleman came from Salt Lake City last week to aid us in our scheme for the Utah road, but it was agreed on all hands that if this proposed bill became a law, we must abandon the project; not only that, but it will prevent the building of a railway from Mojave to San Francisco. Similar legislation to this proposed, was tried in Iowa five years ago, and it resulted disastrously to the public and the railroad people.

During the time this law was in force, railway building was practically suspended all over the State. Now, it is proposed to apply to the railways in California a tariff considerably lower than the tariffs now in force in Kansas, Illinois, and Iowa. But the railway conditions are totally different in California to what they are in those States. Look at the profiles of the Atlantic and Pacific, the Southern California, and the Southern Pacific Railways in California, and compare them with the profiles of the roads through Illinois, Iowa, and Kansas. Illinois and Iowa are practically level countries. You will see that from Chicago to Kansas City the line is practically level, while from Kansas City to the western border of the State of Kansas the elevation is but slight, and is gradual and the grades are easily overcome; and you will notice that as soon as the railway leaves the State of Kansas expensive mountain climbing commences, and from there to the Pacific Ocean it is but one interrupted climb, first up a mountain on one side and then down it on the other. It goes up at the Continental Divide to a height of nearly a mile and a half above sea-level, then down nearly a half mile to Springer, and so on up half a mile and down half a mile five times, till you come to Flagstaff, and from Flagstaff to the Needles down again six thousand four hundred feet, and then up again four thousand feet to the Cajon Pass, then down to the San Bernardino Valley. This climbing up and down, as you know, is only done by long and circuitous routes, and the building of a railway over a mountain range is very expensive. It frequently happens that to

overcome a distance of one mile more money has to be expended than on twenty miles in the plain below.

Then, again, the railways in Illinois, Iowa, and Kansas run directly over the coal fields, and coal in these States can be bought at less than one quarter what it costs in California.

Again, the soil of Illinois, Iowa, and Kansas is universally fertile, and these States are well settled. But on the Atlantic and Pacific Railway from Albuquerque to San Bernardino, a distance of nearly one thousand miles, the country is but sparsely settled, and for nearly half that distance the road passes over a desert, or partially desert, country, affording no local freight or passengers to add to the revenue of the railway.

In Illinois 85 per cent of all the land lies within five miles of a railway, and there is but 1 per cent of all the land in that State that is between fifteen and twenty miles of a railway. Wages paid to railway employes in all States east of the Rocky Mountains are much less than those paid on this coast. Confining ourselves to the State of California, we find that of the three hundred and ten miles, between the Needles and Los Angeles, two hundred and fifty of these miles, between the Needles and the foot of the Cajon Pass, run over a desert country.

The Eastern States above referred to have all the railways they need; they are gridironed with them; coal is cheap and wages are low. But we in California have not one quarter of the railways we need, and the only way we can get them is to encourage railroad companies and not hamper them. People talk sometimes as if the railway companies were coining money out of the needs of the people. But few of the Western roads are paying dividends. Take three of the roads forming the Santa Fe System. The Atchison, Topeka, and Santa Fe Railway Company have \$102,000,000 capital stock, upon which but three small dividends have been paid within the past eight years. The Atlantic and Pacific have \$80,000,000 tied up in their road upon which no dividends have been paid. The Southern California has invested \$13,000,000 in Southern California, on which no dividends have been paid. Is it fair to the men who have built these roads, at this enormous and unremunerative outlay, and have added so largely to the prosperity of California, to ask them to accept rates of freight and fares for their expensive roads similar to those in force in the old, well-settled, and level countries, where cheap coal exists and lower wages prevail, and no obstructions to cheap railway construction appear, and where all supplies for railway construction and maintenance are cheap?

California is badly cut up by mountain ranges, and with the exception of Colorado, it presents more obstacles to railway construction and operation than any other State in the Union. Then again, it is sparsely settled. In that part of the State in which the Southern California Railway operates, there are but five people to the square mile, while in Kansas there are eighteen, and in Illinois nearly seventy to the square mile. Only about one quarter of the land in the State is subject to cultivation. The rest is desert or mountains. Illinois and Iowa, on the other hand, have less than 5 per cent of untillable land, and Kansas less than 9 per cent.

And now in conclusion, what would be the condition of California to-day without her railroads? The railroads have done more than any other factor in bringing about our present prosperity. We are too much

inclined to overlook the benefits we have derived and are deriving from our railways. We need more of them. Let us encourage the building of new roads. Plenty of roads and plenty of competition will regulate freights and fares much better and more equitably than legislation will. This continued agitation and legislation on this question has a tendency to unsettle values and prevent the building of new roads, and is bad for the State.

I am satisfied that if the proposed tariff becomes a law, it will have the effect of not only putting a stop to all railroad building in California, but many of the short roads, now used principally as "feeders" to some of the larger systems, will cease to be operated. The whole effect will be bad for the railroads, and worse for the people.

Committee met January 31st, at 7:30 P. M.

STATEMENT OF C. O. JOHNSON.

(Representing the Pacific Coast Railway.)

MR. CHAIRMAN AND GENTLEMEN: It will not take much time for me to make my statement, and I would like to be heard to-night. I represent the Pacific Coast Railway. While our earnings are something under the \$4,000 limit, yet, we are advertising our section and productions of the soil along our line, having great hopes of its future growth and a corresponding increase in earnings. We also have in mind now, a prospective extension into the easterly interior valleys; and when these are accomplished we may expect to increase our gross earnings to or beyond \$4,000 per mile. The adoption of the proposed amendment now under discussion would work an injustice to our owners, preventing a fair remuneration and the further investment of capital necessary for such extensions, and it would result in our sitting down and quietly closing up, as soon as we have worked up \$3,999 per mile, and studying to prevent our earnings going beyond that figure, so that our owners may at least enjoy a small net earning that now accrues to them, and not decrease these net earnings by further extensions or increase in business. I have been in the railroad business for the past twenty-one years, thirteen years of which time as freight agent and at the heads of the various departments in the service. My experience commenced prior to the inauguration of the Interstate Commerce Act, and prior to the adoption by the various States of supervision by Commissions of railroad rates and fares. Naturally I am opposed to any supervision except those whose money is invested in the plant or the owners themselves; but if you can and must supervise these matters, then in all justice to the capitalists do so reasonably, and then you will improve your transportation facilities, thereby bringing about regulation in rates and service. I say, in justice to these people, give them a fair and just supervision by an honest, fair-minded Board of Railroad Commissioners, made up of men with some experience in the business. This supervision cannot, in my judgment, be just as well made by a temporary Act of your Assembly, as a clear study of the peculiar conditions of the details of railroading in this State must

be made; the cost of fuel and the heavy grades limiting the number of cars each engine can pull; the cost of labor, also figures. When you pull a loaded car over the line you must bring it back empty. It requires much study and personal inspection, which a temporary Act cannot give. The just remedy then, in my judgment, is a Board of Commissioners composed of fair-minded, experienced men, whose supervision shall be such that no objection can be made on the part of the State, the people, or the railroad.

In our particular case the facts are: Our road was incorporated in September, 1882, under the laws of the State of California, and was built in sections. The actual cost of the road, the full amount, was \$972,827; interest on this amount at a rate of 4 per cent would be \$118,913. The net earnings of the road have never reached anything near these figures. Our average gross earnings per annum for the last four years were \$174,949, while the net for 1892 was only \$61,727. The average gross earnings per mile for the past four years was \$2,636; the gross for 1892 was \$2,397. The average net earnings per mile for the past four years was \$989; net for 1892, \$812. The average compensation to all employes, including general officers, was \$2 03 per day; the average in Kansas, Nebraska, and Missouri was about \$1 60 per day, as shown by statistics. Fuel for locomotives cost us: coal, \$10 per ton; wood, \$5 50 per cord, which on the basis of one and one half cords per ton of coal, makes the value of wood \$7 75 per ton; this is against \$1 40 to \$1 50 per ton for Kansas and Nebraska. I know this is a fact, because I operated in Missouri and Kansas. Maintenance of way and bridges cost \$32,578 for 1892. Our line crosses three divides at about equal distances. The grades are heavy going north or south; these grades vary from one hundred and five to one hundred and eighty feet to the mile. In three cases these are over two miles long, in one case three miles, and in another four miles long. There is a difference between short grades and a rapid ascent and ascending the same distance in long distances. You will find it is a greater strain upon your engines. Our two heaviest engines, and they are as heavy as our forty-five pound steel will bear, cannot pull over eight loaded cars to a train; the lighter engines pull only six loads. Our conditions are such that we are obliged, for economic reasons, to haul grain on flat cars, running the risk of storms. The bulk of our business is grain and beans, and is done in three months of the year. This necessitates hauling empty cars one way over long distances, and empty mileage in the other direction, which is very costly. Another element we have to contend with which does not exist in Kansas, in Nebraska, or in any other State, is the factor of grass on the track; with the constant work of section men with this element alone, it requires four months so the road can be operated. During this period it is necessary to have larger gangs of section men, and two thirds of the maintenance of way expense for three or four months is for fighting grass, which is not so in Kansas, Missouri, or Iowa. It is claimed ties last much longer in this country than east of the Rocky Mountains. This is not proven by our experience. Eight or nine months of the year it is very dry, and we have known ties, even of redwood, to be affected by dry-rot, making renewals frequent. And the Southern Pacific Company's line is now under construction to Santa Barbara and will parallel our line for a long distance, running between us and the ocean; this will make our entire line

strongly competitive. Their expense of operating is less on the long lines than ours on the shorter, on account of our general officers. And we could not operate under the proposed figure with competition of the Southern Pacific. We would have to make a reduction of 71 per cent on the principal commodities. Our average revenue on passengers in 1891 was 4 cents, while the average cost of carrying a passenger one mile was 3 cents. We have tried the experiment of reduced rates, but with no success, and I respectfully submit that this would bankrupt the road and prevent future extensions of the line.

STATEMENT OF J. F. KIDDER.

(Representing Nevada County Narrow Gauge Railroad.)

Mr. Chairman and Members of the Committee on Constitutional Amendments of the Senate of the State of California:

GENTLEMEN: As President, Manager, and Chief Engineer of the Nevada County Narrow Gauge Railroad, I desire to present to you some of the characteristics of that road, and to give my reasons why the bills now before your committee, in my humble opinion, should be reported back to the Senate, with the recommendation that they do not pass.

The road extends from Colfax, a station on the line of the Central Pacific, through Grass Valley to Nevada City, total distance twenty-two and one half miles, over a broken and rugged country, situated among the foothills of the Sierra Nevadas.

The distance from Colfax to Grass Valley in an air line is nine miles, whilst by rail it is seventeen miles; from Grass Valley to Nevada City, by an air line, three and one half miles, by rail five and one half miles. It being impossible to construct the road on a shorter line without increasing the gradients above one hundred and twenty-one feet to the mile, which is the maximum used on our line.

Our curvature is very sharp, the minimum radius being about two hundred and eighty feet, total curvature being over 7,600 degrees, or over twenty-one full circles; total length of curve line is 12.26 miles, and tangent or straight line, 10.24 miles.

The sum of ascending grades from Colfax to Nevada City is 1,158 feet, the aggregate length of same 12.16 miles, an average of over 95 feet per mile; the sum of descending grades between the same points is 1,049 feet, the aggregate length of same 9.66 miles, an average of over 108 feet per mile, whilst the total length of level grade is .68 of a mile.

The elevation above sea-level of various points on the line, located in the order as placed in the list, is as follows:

Colfax, 2,414 feet; Bear River, 2,076 feet; Green Horn, 2,152 feet; Kress Summit, 2,851 feet; Grass Valley, 2,448 feet; Town Talk Summit, 2,771 feet; Nevada City, 2,525 feet.

The following comparative table, showing the gross earnings and the expenses of operating, including taxes, interest on bonded indebtedness, and amount expended in construction from 1880 to 1891, inclu-

sive, will be found of interest, as showing the fluctuation of business and the decrease of same by the stoppage of hydraulic mining:

Year.	Gross Receipts.	Expenses.	Profit.	Loss.
1880	\$115,655 55	\$94,800 72	\$20,854 83	
1881	116,465 91	98,667 21	17,798 70	
1882	105,273 20	106,924 71		\$1,651 51
1883	100,978 07	101,571 76		593 09
1884	84,861 66	82,139 04	2,722 62	
1885	89,133 21	91,319 98		2,186 77
1886	98,247 63	102,752 50		4,504 87
1887	94,411 49	88,973 70	5,437 79	
1888	89,211 89	80,783 90	8,427 99	
1889	84,978 69	94,472 50		9,493 91
1890	87,259 49	96,655 47		9,395 98
1891	89,196 18	88,893 21	302 97	

Our statement for 1892 has not yet been completed, as our annual meeting does not take place until April. Of the expenses incurred in 1882, renewal of bridges amounting to over \$11,000 were included; in 1883, renewal of bridges, over \$16,000; in 1889, repairs of passenger coaches, over \$3,000, and new buildings and works, over \$3,000 more, and in 1890 the expenses of snow blockade were nearly \$9,000.

In regard to the economy of the management, I would simply state that the salaries of the general officers are low, each one filling two or three offices, and there is not even a clerk in any one of these departments.

The amount of wood used in the service of the road is about two thousand cords annually, costing \$3 50 per cord. The supply is becoming short, and I will soon have to build a branch of three or four miles to obtain a supply.

Regarding the increase of travel by reducing rates, I would offer the following pertinent example: Our regular passenger rate between Grass Valley and Nevada City is 50 cents, and the public were very anxious that I should try the experiment of a local at half rates. So, in order to satisfy them, I established a double daily service in 1884 between those points, running at such hours as would best satisfy the traveling public, and placing the fare at 25 cents, with the result that at the end of four months our receipts had averaged \$3 90 a day, and our expenses had been over \$11 a day.

The gentleman representing the Traffic Association of San Francisco has gravely informed you that railroads should be operated in California cheaper than in other portions of the United States, for the following reasons: On account of the equable climate, on account of our roads not being ballasted with rock ballast, and on account of the durability of our timber permitting our worn-out ties to be used for fence posts. Permit me to state, for his benefit, that in Nevada County we have as high as one hundred and fifteen inches of rain in six months, our average rainfall per annum being about sixty inches.

And it strikes me very forcibly that if the one hundred and fifteen inches of rain should fall in his States of Iowa and Kansas, that he would not be obliged to apply to the Legislatures of those States to wreck the railroads, but would rather have to search the Gulf of Mexico for the remains. On January 12, 1890, a storm commenced and snow

fell to a depth of five feet, blocking the road till the 25th of the same month; and on February 18th, another storm deposited snow to about the same depth, causing a blockade till the 26th. The cost to the road of attempting to raise these blockades was nearly \$9,000. Of course it is apparent to any one that it is cheaper to operate roads in California than anywhere else. To his second reason, I would answer that our road is ballasted with rock ballast taken from one thousand five hundred to two thousand feet below the surface of the earth, and still it does not take one of our section hands a whole day to remove and replace three ties, as the gentleman thought, and so expressed himself, it did on some of the roads in the East, with which he was familiar; a remark which I am afraid would subject him to the ridicule of all the trainmen in the United States.

Answering his statements about the durability of timber, let me give you an example: In 1875 we completed two spans of Howe truss bridges, one hundred and sixty feet each in length, and in 1882 and 1883 we were compelled to rebuild the same entirely, as the timber was so rotten as to be unsafe. These bridges were kept well painted. I have put redwood planks four inches thick under the subsills of our trestle bridges, and in three years have had to replace the same, as they were so rotten as to be nothing but punk. The acid in the red soil of the foothills decays timber faster than in any other section with which I am familiar; and instead of being able to sell our removed ties for fence posts or fuel, we collect and burn them as we would brush to get rid of them.

Does it not, to say the least, seem presumptuous in the Manager of the Traffic Association, after a residence of one short year on this coast, to formulate a bill for the government of thirty roads of this State, when he coolly informed you that he has not inquired into the characteristics, or applied for any information in reference to any line save and excepting the Southern Pacific Company? In other words, if he can only cinch that company he cares not how the other roads, representing millions of capital, may be affected. It was a very easy matter to find out all about the outside roads, from the sworn statements on file with the Railroad Commissioners of this State; and if he could only find time in one year to formulate a bill to regulate the Southern Pacific Company, and incidentally, without examination, the other twenty-nine roads of California, how can it be expected that the Legislature of California, in a session of sixty days, and with some other little business before it, can give this matter such attention as to do justice to all concerned?

In conclusion, I would state, as you have already been informed by our attorney, that we stand upon our special charter, and certainly will submit to no interference with the same until the question has been decided by the highest tribunal in the land. But I would ask, is it fair or just for the Legislature of the State of California, after entering into a special contract with the promoters of this enterprise, guaranteeing to them rates of freights and fares, without which they would not have invested their money, to now force us to the expense and annoyance of defending our charter before the Courts?

I thank you, Mr. Chairman, and gentlemen of the committee, for your courtesy.

STATEMENT OF J. F. BURGIN.

(Representing San Francisco and North Pacific Railway.)

GENTLEMEN: In the open session of the California Senate, bills are introduced right and left on all subjects. Some are inspired by good motives, some inspired by selfish motives, and many from mistaken and ill-considered ideas.

Little time can be given to the discussion of the subject there; but the people of the State of California, as a body, cannot take evidence and decide these questions; the Senate is expected to do this in their sphere. The Senate here stands between the temper of certain classes on the one hand, and the property rights of her citizens and corporations on the other; and the quintessence of this responsibility is put upon you gentlemen of this committee, as far as the railroad legislation is concerned.

On behalf of the San Francisco and North Pacific Railway Company, better known as the "Donahue line," I wish to claim only a few minutes of your time to lay before you certain facts and certain evidences which, independent of all public clamor, must bear their legitimate weight when you come to conclude the open controversies this proposed bill has brought up.

In the first place, I represent a railroad of a total mileage of one hundred and sixty-five miles. It runs from Point Tiburon, in Marin County, to Ukiah, in Mendocino County, and by branches to other points, and is a standard gauge railroad. This railroad would be severely affected by the proposed bill. The North Pacific Coast Railway, with a mileage of eighty-seven miles, will be similarly affected; so will the Eureka and Eel River Railroad, of thirty miles, and all the other railroads.

The public agitation which has been waged against the Southern Pacific Company in this State entirely ignored all consideration of these smaller railroads, pro or con.

It aimed its political javelin at the Southern Pacific Company, with its grand aggregate of total mileage, which is greater than the mileage of all the smaller railroads put together.

A law designed for a number of railroads operated in one system, such as the Southern Pacific Company, cannot possibly be justly applied to the short distance roads, or to the roads operated singly. A bill that would regulate the large road would injuriously discriminate against the short roads, and a bill that would discriminate against the large road would annihilate and close up the short roads altogether.

Now I will state a few facts to show this from a strictly business standpoint. I do not propose to plead poverty on behalf of the Donahue properties, but simply to compare the result of our present operations with what the result would be in case we operated our road under the present proposed bill.

The building of our road cost \$7,090,059; its bonded indebtedness is \$4,188,000. The necessities of the case compel us to pay interest each year on our mortgage in the sum of about \$230,000; all this, with payments to our sinking fund, must come from our net profits. If we did not pay it out of our net profits we would have to close up the railroad altogether.

Now, if our company should be reduced immediately to an established rate of 3 cents or less per mile in passenger, and to a freight rate as proposed in the schedule, what would the consequence be to us?

Mr. Leeds has stated that this reduction would affect the Southern Pacific Company to the extent of 25 per cent of their gross earnings. We will show that the reduction to our company would be near 50 per cent. It is a well known fact that the comparative expenses of a small railroad are greater than those of a larger one, over a corresponding distance. But, Mr. Leeds has stated that a 25 to 30 per cent reduction on the gross earnings of the Southern Pacific Company would be the result if this bill should become a law. Apply this reduction instead of the 50 per cent reduction, to our company, and what would be the result?

Under the favorable auspices of the past, our road's earnings for the last fiscal year show a surplus of \$106,007, after paying interest and betterments. If the road had been run under the regulations of the proposed bill, the same road, with the same economy, and the same prosperity, would have run behind that year \$130,125 67, and would have plunged the stockholders in debt to that extent. If I may use an old expression, "figures do not lie." For the fiscal year ending June 30, 1892, our company's gross earnings were \$886,471; less Mr. Leeds' 25 per cent reduction, \$221,619 75; making our gross earnings only \$664,978 92. Now, our operating expenses and interest amount to \$794,978 92; making us run behind, in one year alone, \$130,125 67.

Would you, gentlemen, as business men, like to make an investment in the stock of our road if you were compelled to run it on a basis of three cents a mile, and with the proposed freight tariff, knowing that, no matter how the traffic was kept up, and no matter how smoothly things ran, your final balance sheet, which formerly showed a small profit, would then alarm you with a great annual loss?

Now, as far as the people of the State of California, represented in the Senate and in your committee, are concerned, they do not ask you to regulate the freight and fares of the Donahue road; the people do not complain of our rates; the people do not want our rates cut; the people do not want this proposed bill, as far as our road is concerned.

Why, even the shippers on our line of road are not complaining, nor will you hear from our passenger traffic. And what is the reason of this? Simply because the people in the districts our road penetrates, want our train service; not only that, they want more; they come to us from the north, from the northeast, and from the northwest, and beg us to extend our road and come to their relief. They all realize that we are not able to reduce our rates and live; they pay our rates cheerfully and willingly. They would rather do that than suffer a reduction of train service, and a partial loss of the facilities of transportation, which, of course, would be the result of the passage of this bill.

In these days of anti-railroad agitation it may seem strange to you that the people are thoroughly satisfied with our rates. I may as well confide in you a portion of the secret history of the road. We have had only two complaints filed against us with the Railroad Commissioners during the last eight or nine years of the road's operation; the charges were dismissed; it was found that the same individual had filed both charges, and it was further found that he had only shipped during the whole period one or two tons of freight, and he himself had only trav-

eled over the road twice, and on one of those occasions he traveled on a free pass.

You, gentlemen, have already heard the opinion of Mr. Leeds on the subject. I cannot call it testimony, for he knows no facts; he simply gives his opinion; it is entitled to no greater weight than the opinion of any of you gentlemen in the absence of facts to support it. Some of his assertions are not universally admitted; for instance, in the case of maintenance I do not agree with Mr. Leeds' assertion that the cost is less in this State than in the State Mr. Leeds uses as an example for establishing the rates of fare and freight which you have before you in the printed bill.

In this State much greater are the hire of labor, the cost of rails, the cost of cars, the cost of locomotives, the cost of fixtures, and greater than all the cost of coal. The cost of this commodity in particular, to us has been on an average \$7 25 per ton (placed upon our locomotive tenders), and in some years has run as high as \$14, according to the condition of the coal market, reaching this figure in 1886, the cost to the Eastern roads being from 75 cents to \$1 50.

Mr. Leeds has stated in answer to a question from your honorable committee, that the effect of the reduction of these rates upon the independent roads would be an increase in travel. M. Leeds in his answer did not state his reason for this increase of business to the roads except the reduction of rates. I would like to call the committee's attention to the fact that it took eighteen years for the Illinois Central, the Pennsylvania Central, and the Lake Shore and Michigan Southern, to come down from an average 3 cent to an average 2 cent earning per mile, with a population ten times as great as that of this State. Yet this bill calls for an immediate reduction and allows for a reduction of even less than 2 cents per mile.

Let us compare the population of the State of California, also that of the counties through which we run, with the several Eastern States which operate their lines upon the passenger rates and freight tariff like unto the one Mr. Leeds has brought forward to be a basis for the operation of the roads of this State. Below I give you a table taken from the "Statistician" of 1892:

	Population per Square Mile.	Square Miles.	Inhabitants.
Marin County.....	10	590	13,072
Mendocino County.....		3,694	17,612
Sonoma County.....		1,548	32,721
Lake County.....		1,125	7,101
California.....	10	6,957	70,506
Connecticut.....	8	158,360	1,208,130
Illinois.....	150	4,990	746,258
Indiana.....	60	56,650	3,826,351
Massachusetts.....	65	36,350	2,192,404
New York.....	250	8,315	2,238,943
Pennsylvania.....	150	49,170	5,997,853
Ohio.....	175	45,215	5,258,014
	90	41,060	3,672,316

One glance at these figures will show you why roads can operate with passenger rates in the States enumerated above, with the exception of this State, at a 3 or 2 cent rate, and even less.

It is my opinion that if this bill should pass and become a law, this State, instead of progressing, would retrograde. It is the ambition of the people of the State of California to have additional railroad communications with the East. Do you think that in the face of adverse legislation capitalists will expend their money, when they see that they will not get a fair return of interest for their investment; but, instead, that the chances are greatly that it will be a losing investment? Mr. Leeds has said before you that people sometimes make bad investments.

The people of Humboldt County have been in a manner isolated from the balance of the State. The only approach to their county is by water, over one of the most dangerous bars on the coast, or by stage line overland for a distance of one hundred and fifty miles. They have been clamoring for a railroad communication. It will take several millions of dollars to make this desired extension from the terminus of our road. This county has only a population of twenty-five thousand people. Do you think, gentlemen, that a railroad could be built into this new county, and be operated upon a passenger rate of 2 cents per mile, or even 3? Do you think that this railroad could be operated upon a freight basis such as has been brought forward by Mr. Leeds, and pay the interest upon the investment?

It can be conclusively shown you that with skillful and fostering care, the San Francisco and North Pacific Railway the Donahue railroad, has penetrated the fertile valleys of Marin, of Sonoma, and of Mendocino, and if the Legislature does not kill railroad enterprise in these counties by mistaken or hurriedly considered legislation, this railroad will pierce the neglected forests and valleys of upper Mendocino and Humboldt but I assure you they will never get there on 2 cents a mile basis, or on the proposed freight tariff.

I think, gentlemen, that, as far as our road is concerned, I can leave this matter safely in your hands, for if I quote Mr. Leeds' answer when your honorable committee asked him what effect this tariff would have upon the independent roads, he stated he had never examined into the costs of operation, the prospects of freight and of travel, or the condition of the country, or even into the cost of the construction of the various railroads. I think Mr. Leeds, himself, has already given a negative answer to the proposed bill, as far as our road is concerned.

STATEMENT OF THOS. MELLERSH.

(Of the San Francisco and North Pacific Railway Company).

MR. CHAIRMAN AND GENTLEMEN: No measure has ever come before the Legislature of California of as great importance to the road I am here to represent as the present amended bill, or present bill before the Legislature.

It would be fallacious at this time to predict how far-reaching it may be, but the measure that has been introduced here has already preceded us and has gone as far as Chicago. In order, gentlemen, that we may fully make you conversant with our road, and what we have to give you in the way of statistical details, I would like, with your permission, to present you each with a copy of our Annual Report, in order that you may more clearly follow me.

[Each member of the committee was here presented with a copy of the Annual Report of the San Francisco and North Pacific Railway Company for the year ending June 30, 1892.]

Our road, gentlemen, if you will turn to the first page, you will notice commences, you will find by the map, at San Francisco, and we run to Point Tiburon, employing in the operation of ferriage, three steamers, one of which was burned January 1st, leaving but two. From Tiburon we run to Ukiah, north, a distance of one hundred and six miles, and at Ignacio we run to Glen Ellen, a distance of thirty miles, east. At Santa Rosa we have a branch to Sebastopol, and from Fulton we run to Guerneville.

The total mileage, if you will kindly turn to the first page in the printed matter you will find, is one hundred sixty-four miles and sixty-five hundredths. The first feature that we would like to ask you gentlemen to consider, is one of the factors in our operating expenses, and will be found on page forty-five, table F, and you will there find that we spend, this little company of ours, the amount of \$19,810 23 per year—the third line—for advertising. Of course, you will say this advertising is for our benefit. We grant it, but in order that we may bring people to California, we spend a good deal of that advertising money in New York. We even go so far as to put articles in New York papers. We even go so far as to print books and circulars, and send them East and distribute them, and we do not stop at New York; we cross the Atlantic Ocean and put those folders and papers in Germany. Now, gentlemen, if people come here from such remote parts, and pay us the fare for traveling over our road, which they consider reasonable, I do not think the people of this State should be dissatisfied. I think the State, gentlemen, gets infinitely more benefit than we do. The next feature I will ask you to turn to now is on same page, and below you will find that the cost of operating our steamers, consisting of steamer repairs, steamer expenses, wages of crews, and dock repairs, and fuel for steamers, amounts to \$91,835 21. But, gentlemen, the expenses do not stop there. Whilst we show that as being the cost of operating our steamers, with your permission, Mr. Chairman, I would like to now give you a further statement.

In addition to the actual running expenses, \$91,835 21, as shown in that statement, you will find that we pay for rent of slips to the Harbor Commissioners \$1,400 per month, amounting to \$16,800 per annum. Further, we pay also to the Harbor Commissioners for switching cars, 75 cents for each car, amounting to \$5,505 per year. This latter figure is approximate. Making a total for operating our steamers of \$114,140 21. The percentage of operating the steamers to gross receipts, or in other words, out of every \$100 that we take in for gross receipts, we pay out \$12 87, or 12.87 per cent; the percentage of cost for operating our steamers to gross expenses is 19.85 per cent. Now, if you will consider the fact, that outside the Southern Pacific Company, the North Pacific Coast, and ourselves, that we are the only one that is taxed with this most extraordinary expense, it does seem to me that therein lies a fact why we, above all other companies, should have at least some special consideration.

Then, gentlemen, while the steamers, as I have outlined here, show so much cost to operate them, it does not altogether rest there, because they are constantly being disabled. For instance, the steamer

"Tiburon" over a year ago broke her shaft—cost about \$5,000 to replace it, besides we lost the use of the steamer for two months. Only last month she broke her crank-pin—cost \$300 or \$400 and laid her up two or three weeks. Then, in order that she might begin the year auspiciously, on the 1st day of January, she went and burned up; true, she was insured, but the cost to put that steamer into service again, over and above the amount that we shall recover for insurance, will be a considerable amount—in fact, quite an item. These are points, gentlemen, that we particularly wish you to take into consideration this evening. Now, our little road is not by any means a cheap road to operate in the matter of grades. Our grades are particularly heavy.

We will take, if you like, Colonel Morgan's report; it is good enough for us, and I suppose you will be satisfied to take his figures—but I have had them verified by our engineer, and he shows that after leaving Tiburon, just above San Rafael, we have a grade of one hundred and forty feet to climb; further on, one hundred and fifty-one feet; then it drops down to ninety-nine, and finally near Ukiah, it is six hundred and ten feet above sea-level. In connection with that matter—all of our heavy traffic has necessarily to pass over the worst grade—the worst grade is just above San Rafael—so that all of our north bound and all of our south bound traffic has necessarily to pass over that heavy grade.

To show you the additional cost it is to operate over heavy grades on our road, I will read from the engineer's report:

The aggregate length of tunnels on this road is eight thousand eight hundred and ninety-nine feet, or one and seven tenths miles. He says the maximum grade going north is one and three hundredths per mile. Passenger locomotives will haul seven cars north, and ten cars south; an extra locomotive being used in trains exceeding these numbers. Freight locomotives haul twelve cars north, and eighteen cars south. When trains exceed these numbers, extra locomotives are used, or two or more trips made. Maximum grades in both directions are near San Rafael, only ten miles from the southern terminus, and nearly all passenger and freight traffic to and from San Francisco must be hauled over that. In tunneling, I show you that on our road it is greater than what it is on the Pennsylvania Railroad. I don't think you gentlemen would have thought of that; that we, a little road running from San Francisco to Ukiah, one hundred and sixty-five miles, have more tunneling on our road than the Pennsylvania Railroad Company; in other words, one and seven tenths miles of tunnels. How expensive these are to keep up, to carefully and constantly watch, no one but a railroad man knows.

The next thing I would like to call the attention of you gentlemen to, is the rough country. We run over a very rough country, and a very sparsely populated one; from Ignacio to Glen Ellen is a valley, and we run through a marsh. The Southern Pacific parallels us through the valley; the valley itself is only one and one half miles wide, and the population is so slim that it is hard to find them, and you can imagine how much two roads can earn in that mile of territory. You can imagine how little there will be for us.

Now we come to Cloverdale and the new extension to Ukiah. From Cloverdale to Ukiah, thirty miles, with the exception of Hopland, where there are a few houses and a small number of people, there is absolutely

nothing but high bluffs and rough country, sheep ranges. We don't transport the sheep, and we hardly transport the ranges.

The next feature, and the one of very great importance, is the question of fuel; you have heard that discussed before. Our friend Leeds, of the Traffic Association, made the assertion here—in fact he made several—that in the matter of fuel, we can do relatively so much more than Eastern roads. In connection with that, I have prepared some more figures, and I would like to submit some statements to your committee. [Handing each of the committee a statement.]

This statement—if you will please follow me—the first column I show the average number of cars in passenger trains; the average number of tons per engine mile; the miles run per ton of coal; the average cost per engine mile for fuel; pounds of coal used per engine mile; average cost of fuel per ton. So as to make a favorable comparison with our company, I have chosen the Queen and Crescent system. The Queen and Crescent system runs in an air line from the city of Cincinnati, Ohio, through Kentucky, Tennessee, Alabama, Mississippi, into New Orleans, Louisiana.

Again, it runs from Meridian, in Mississippi, to Vicksburg, Mississippi; there crosses the Mississippi River and runs to Shreveport. Those States that it runs through, excepting Ohio—for instance, Kentucky, Tennessee, Louisiana, Alabama, and Mississippi—are all more or less of an equable climate. The lower States compare not unfavorably with the climate of our own climate here. As Mr. Leeds has seen fit to lay so much stress on equable climate, it is just as well to give him a little climate. Now, gentlemen, if you will then follow me, having explained the different features of our road:

You will find the San Francisco and North Pacific Railway haul an average number of cars in passenger trains, 4.1; the Cincinnati Southern—that is, their division running from Cincinnati to Chattanooga, Tennessee, three hundred and thirty-six miles—4.3; the Alabama and Great Southern, two hundred and ninety-five miles, running from Chattanooga to Meridian, 4.9; the New Orleans and Northeastern, one hundred and ninety-six miles, 4.5; the Alabama and Vicksburg, one hundred and forty miles, 5.1; Vicksburg, Shreveport, and Pacific, one hundred and seventy miles, running from Vicksburg to Shreveport, across the Mississippi River, 4.6.

The next, the average number of tons per engine mile, is 63.60 on our road; the average number of tons per engine mile on the Cincinnati Southern Railroad is 201.09, or, you will see, three times as much as ours; on the Alabama Great Southern Railway, 178.98, or three times nearly; on the New Orleans and Northeastern, 204; the Alabama and Vicksburg Railway, 213; and on the Vicksburg, Shreveport and Pacific, 126.

Now, gentlemen, the miles run per ton of coal: we make nearly double the mileage. Our road is 45.86; on the Cincinnati Southern Railway it is 23.70; on the Alabama Great Southern Railway, 30; the New Orleans and Northeastern, 27.90; the Alabama and Vicksburg, 32.50; the Vicksburg, Shreveport, and Pacific, 37.20. It is very easy, I think, for you to see, gentlemen, why we can make nearly double the miles per ton of coal, when we haul sixty-three tons as against their two hundred. In fact, to make the figures relative, we should run three times the number of miles if we only haul one third the tonnage.

Now, again, the next figures, the average cost per engine mile for fuel: Our road, you will notice, is 16.1 cents; the Cincinnati Southern Railway, 5.72 cents, or about one third; Alabama and Great Southern Railway, 4.52 cents; New Orleans and Northeastern, 7.31 cents; Alabama and Vicksburg Railway, 5.80 cents; Vicksburg, Shreveport, and Pacific, 7.51 cents.

Now, gentlemen, the next feature that Mr. Leeds made, and which I remember distinctly, is that we here ran a mile on fifty-five pounds of coal, as against any Eastern road running on one hundred and ten; I believe that was right.

Now, if you will refer to our column, you will find that the pounds of coal used per engine mile with us is fifty pounds; with the Cincinnati Southern, ninety-five pounds; Alabama and Great Southern Railway, seventy-four pounds; New Orleans and Northeastern, eighty pounds; Alabama and Vicksburg, sixty-nine pounds; Vicksburg, Shreveport, and Pacific, sixty pounds. But they, in order to cost more to run the mile, haul over three times the same amount of freight that we do.

Now, then, the next column is the average cost of coal per ton. And right here, I would like to interpolate the fact, gentlemen, that these figures—in fact, I will substantiate them, with your permission, as I proceed; and you, gentlemen, can see for yourselves that these figures are not gathered up for the purpose of making an argument, but they are actual facts, and you, gentlemen, can follow them just as readily as I can.

The average cost of coal per ton on the San Francisco and North Pacific Railway is \$7 25.47; Cincinnati Southern is \$1 37; Alabama and Great Southern is \$1 36; the New Orleans and Northeastern is \$2 03; the Alabama and Vicksburg Railway is \$1 88; the Vicksburg, Shreveport, and Pacific Railway is \$2 79.

I am exceedingly sorry that Mr. Leeds is not here to-night, for I would have liked him to have heard the figures.

Now, gentlemen, we will refer, if you please, to the climatic conditions. Again, Mr. Leeds has seen fit to allege that on account of climatic conditions we can do all kinds of impossible things that Eastern roads cannot do. Now, let us see how that comes out. In the matter of snow on our road, we are not troubled with it; our friends, the Southern Pacific and other roads are. The slides and washouts we are troubled with, because we never have a heavy rain that we do not have slides and washouts; in fact, up above Cloverdale, where the bluffs run high and the hills slip back for three or four hundred feet high, just as soon as we remove anything from the base, the water comes down and carries the hill with it, and we find our track, instead of being over it, is out in the river. This is not an infrequent occurrence.

Now, in the matter of cross-ties: Mr. Leeds distinctly made the statement the other night that the Eastern roads replaced their cross-ties two or three times as often as we do. Now, let us see how that comes out. I call your attention, Mr. Chairman, to a comparative statement of replacement of cross-ties. [Mr. Mellersh here handed each member of the committee a statement in regard to cross-ties]. You will notice it gives the names of railroads, and the rate per one hundred thousand ties replaced per year in 1891 and 1892, and the cost per tie. I again use these same roads, because, as I stated, they run through States whose climate is about as equable, as a general thing, as our own. I have lived down there, and I know whereof I am speaking:

On the San Francisco and North Pacific Railway we replace, per one hundred thousand cross-ties, fourteen thousand five hundred, or one seventh, and the cost per tie was 35 cents.

The Cincinnati, New Orleans, and Texas and Pacific Railway replaced twenty thousand per hundred thousand cross-ties, or one fifth the first year, or one quarter the second year, costing 30 cents per tie.

The Alabama and Great Southern Railway replaced twenty thousand in 1891, or one fifth, and in 1892 one quarter, at 30 cents per tie.

The New Orleans and Northeastern Railway replaced only ten thousand, you will notice, or less than ourselves by forty-five hundred per hundred thousand; one tenth, as against our one seventh in 1891, and one ninth the next year against our one seventh, and they paid for their ties 25 cents each.

The Vicksburg and Meridian replaced twenty thousand, or one fifth in 1891, and one quarter in 1892, at 30 cents per tie.

The Vicksburg, Shreveport and Pacific replaced twenty thousand cross-ties, or one quarter the first year, and one fifth the second year, at a price of 30 cents per tie.

Now, the whole of the question does not rest there, Mr. Chairman; for the fact is that we, in California, use generally redwood for our ties; East, they use mainly pine. Our engineer, who has studied this question, says:

"From the above, it will be seen that the average life of ties, principally of pine, referring now to Eastern ties on the Queen and Crescent road, with the exception of the New Orleans and Northeastern, is from four to five years.

"On this road, our run is seven years. While the redwood is an excellent wood to resist decay, from the fact that it is very soft; a majority of the ties on this coast are renewed on account of being worn out, or cut out under the beds of the rail. The fact also remains, Mr. Chairman, that inasmuch as those Eastern roads run so much heavier engines than we do, haul so much heavier loads, longer trains, that they, as compared with ourselves, would naturally use ties a little oftener; but we claim that our one seventh, as against their one tenth or one fifth, is not an unequal comparison; and hence, that Mr. Leeds, in having made the assertion that we can use our ties two or three times as long as they can East, is not, according to records that we have obtained—and we contend our records are reliable—is not strictly correct.

Now, gentlemen, he made another assertion—it is becoming a hackneyed assertion—but I went to the pains of asking our General Manager and our Engineer to figure out the assertion made by Mr. Leeds in regard to the use of cross-ties, and I would like him to know that it is a fact that we do use some of our cross-ties after they have been taken out of the track for fence posts, and so far as we can find out, during the last three or four years we have used a sufficient quantity to result in the saving to our company of something like, all told, an aggregation of \$159.

Now, gentlemen, it is also a fact—and with so many railroad men present, if I do not make figures that are absolutely reliable, there are plenty here that would catch me up—that a railroad company does duplicate its road practically in every ten or fifteen years, so far as its roadbed is concerned; that is the ties, and rails, and wooden bridges, and equipment, but iron bridges not so often; they might run to twenty

or twenty-five years, or perhaps longer. But, you say, we have an engine that we have been using for twenty years. Yes, we have; but during that time that engine has had new driving wheels, new trucks, cylinders, new jacket, and perhaps so much has been renewed of the engine to what it originally was, that you can say it is not the same engine. Now, if you will take that fact into consideration, that the railroad has practically to duplicate itself in every ten or fifteen years, you can see what resources railroad men are put to in order to maintain at all times a standard, not only required for the safety of the people, but for the safety of the road.

Now, another feature we have to contend with lies in the fact that our traffic, if you will kindly refer to page 58, table M, you will find that products of the forest are 25.96 per cent of our total freight traffic; therefore, on such conditions we are relying on timber, lumber, shakes, shingles, tan bark and such forest products for that much of our revenue. By reason of the country contiguous to our railroad at Guerneville, Ukiah and other sections having been cleared, the haul of such timber, lumber, etc., is so much, that hardly any of those men can now ship the same quantity as heretofore, by reason of the expense of hauling; therefore, our revenue by that reason is mulcted to that extent. Then again, we haul rock, and in hauling rock we get something between half a cent and three quarters of a cent per ton per mile; or, if you figure out the cost of hauling it, an actual loss to the company. Then again, we have no mineral traffic to haul, with the exception of blocks or something like that; we have no coal, so that our road is purely dependent on agricultural and forest products.

Then again, the next feature, and which I particularly wish you to bear in mind, lies in the fact that we are subject to the severest competition. At San Rafael and as high as Petaluma we have water competition. The sloughs run up as high as Petaluma, so that steamers and schooners run at all times, and they haul freight so exceedingly low because their cost of transportation is so low, that no railroad company can compete with water transportation. That harasses us more than you can imagine, and hurts our revenue not a little.

Now again, in regard to the measure that you speak about, of making rates 3 cents per mile. The State has given us the permission to charge 15 cents per mile.

EARL: Wherein?

MELLERSH: The laws of the State, I believe; the Commission. To show you that we, as a corporation, are always willing to conform to the laws, and do better than the law requires, our average rate per passenger per mile, if you will kindly refer to another table, table J, on page 53, for last year, is two and two hundredths cents per mile. The reason why that figure is so low, I explain to you, lies in the fact that a good deal of our traffic is suburban traffic. That traffic consists of three or four hundred, or may be less, people, who pay us \$5 per month for carrying them sixty trips, each trip being sixteen and a half miles, or less than half a cent per passenger per mile. Then again, to hunters and excursionists, to all those who come in parties, we are always ready to meet them half way on any proposition they may have to offer; so that I contend that our passenger rate, two cents per mile, compares very favorably, when you consider the expense of operation, with any railroad fare in the world; not only America, but the world.

Now, gentlemen, a word as to the cost of our property. Mr. Burgin in his report, and I confirm all that the President has said, made the statement that our road cost us \$7,059,026. Mr. Leeds has contended—I don't exactly remember where, but I think that such can be borne out as the fact—that a railroad company cannot, he says, expect to earn dividends upon its present cost, because railroads can be built now cheaper than when they were originally constructed, and he gets out of it by saying that if you make a bad investment that is your affair. That is all right. Now, then, for the argument. We are willing to concede the fact that our road cost \$7,090,000. We are willing to put it on the basis of 75 cents per dollar upon its cost in order that we may to-day make a fair return to the investors in the property. Three-quarters of the value of the figures I gave you would amount to \$5,317,544 44. The mortgage bonds of the road are \$4,188,000, leaving therefore \$1,129,544 44. Now, then, on Mr. Leeds' basis, we should earn a dividend on that, and I think 5 per cent you will concede is a fair dividend. Five per cent on that would result in giving us \$56,477, or less than 1 per cent upon the capital stock of the company at present. But on that basis we could pay on \$1,000,000, \$1,129,500 44—5 per cent, equal to \$56,477. Before, however, we can pay \$1 out in dividends we have to pay for interest on the mortgage bonds per year \$209,400, in addition to which a sinking fund of \$25,000, making a total of \$234,400, which must be provided—otherwise it means foreclosure.

Therefore, gentlemen, I contend that last year, page number ten, if you care to refer to it, you will find that we succeeded in obtaining a net result of \$81,017 19, which, under ordinary circumstances, would have been available as dividends, but—and there always seems to be a but in these dividend questions—the money has never been paid to the stockholders; in fact, since the inception of this company, the 19th day of March, 1889, up to now, not one dollar has been paid to the men that put their money in the property, in the way of dividends. Therefore it is not fair, is it not right to ask you, gentlemen, to pass no measure that shall disturb our present basis. Now, Mr. Leeds seeks to introduce—or the Traffic Association, or by some means, I don't exactly know how—a bill here on what he calls a California Distance Tariff.

By way of explanation, Mr. Chairman, I would like to say that you will see under the class rates—the first column is our rates at present in effect, the blank column the rates that would be in effect under this distance tariff—you will there find that five miles and under, where we now get per hundred pounds, 5 cents, this new schedule would give us but 3½ cents; then if you like to jump down to, say fifty miles, you will find where we are getting 37 cents, this new measure would give us 25 cents; now if you like to jump down again further, say eighty miles, you will find that where we are now getting 43 cents, we will get 35 under the new tariff.

Now these rates, Mr. Chairman, and we have figured them out carefully, simply mean that it is an absolute reduction in our present freight tariff of between 35 and 50 per cent on our class rates, and on our carload business—and most of our traffic is carloads, consisting of lumber, shingles, and stuff like that—the reduction would be, and I will read them out to you: 52 per cent, 54 per cent, 51½ per cent, 50 per cent, 51 per cent, and so on, plainly showing to you, gentlemen, that the reduction would mean to this company a cutting down of our freight

revenue, by the introduction of such an amendment, of over 50 per cent in our revenue. Colonel Morgan in his report has given a statement showing the population of the country, which Mr. Burgin made to you—but he makes another statement here that I think gives a good deal of information, and I think will illustrate how much of certain commodities we have to draw from. We consider that wine, grapes, and such commodities are quite large factors in our business.

If you will look at this report, you will find that Mendocino County contains an acreage in grapes of about two hundred and four acres; in Marin County, about five hundred and two acres, and in Sonoma County, twenty-two thousand six hundred and eighty-three acres; so that our railroad has about twenty-three thousand acres to draw from to get the wine shipments and grape shipments, which are, as I said, quite a large factor.

Then again, the entire population of the three counties is only sixty thousand, about, and out of that sixty thousand there is the San Francisco and North Pacific Railway, the North Pacific Coast Railway, the Southern Pacific Company, and those schooners and steamers that go up there to draw from; when we all cut up that sixty thousand we don't get many each.

In buying our material in California, there is quite an element. Cast iron, per pound, in Kansas is $1\frac{1}{4}$ cents, here it is 4 cents; wheels—and we are bound to have wheels for cars—cost in St. Louis \$8 50, in New York they cost \$8 75, and here they cost us \$14.

Now, gentlemen, that high rate—not the high rate, but the difference in price—does not rest in the fact that the railroad companies are charging too much to get them here, but it is all attributable to the fact that America is too big; the country ought to be condensed, and we could get our supplies. In starting out, Mr. Chairman, I stated to you that already what we were doing in California was making itself felt East; I don't know whether or not this committee would care to know the opinion that the railroad papers have of the situation in California. If you do not wish to hear it, I will not read it.

EARL: Proceed, Mr. Mellersh.

MELLERSH: The "Railway Age," under date of January 20, 1893, reads as follows:

"The bitter and vindictive warfare which is being waged by many of the newspapers and people of Northern California, more especially those of San Francisco, against the railway companies of that State, furnishes an extraordinary example of ingratitude and injustice. Because California is cut off by thousands of miles of desert and mountains from the great markets of the world, and because within its limits the construction and operation of railways is attended with great expense, owing to the character of the country, the lack of diversified industries, the high cost of fuel, and the maintenance of large land holdings, railway rates naturally have to be higher than they are in the thickly settled and productive East. And yet, it is against this result of natural causes that the popular clamor is so unreasonably raised. The demand is, in effect, that the railways shall literally annihilate distance and ignore nature so far as their charges are concerned, and give the people of the mountains and plains of California as low rates for transportation as are offered in Illinois or New York. It is in vain that the railway companies set forth the cost of constructing their pioneer roads across

the continent, point to their load of debt and show that the expenses of operation absorb the earnings so that bankruptcy has overtaken some and threatens all the lines. San Francisco merchants, fruit and grain growers, and the politicians and papers that follow after popularity repeat the cry 'rates must come down,' and demand that all the power of the State government shall be employed to this end, oblivious of reason and justice.

"Accordingly, the session of the Legislature just convened promises to be memorable for the passage of laws intended to crush the railways, particularly the Southern Pacific Company, which, having developed the State into independence, is now inconsistently denounced as its enemy. Already three hostile measures are under consideration: First, Shanahan's concurrent resolution, providing for a constitutional amendment abolishing the Railroad Commission; second, Schlesinger's resolution, providing for the appointment of a special committee to investigate the Railroad Commission, and to prepare articles for the impeachment of one or more members of the Commission, if the special committee deem impeachment justifiable; third, the Traffic Association resolution, providing for a constitutional amendment abolishing the Railroad Commission, authorizing the Legislature to fix rates for freight and fares, and providing in the Constitution a tariff to be operative in case the Legislature should not fix rates.

"The last proposed measure, upon which Mr. E. S. Leeds, as Manager of the Merchants' Traffic Association, has concentrated his ability and long experience in the railway service, is an extraordinary embodiment of reckless enmity to the railways. It proposes not only to abolish the Railroad Commission, which has shown some disposition to be fair to the roads, but to insert in the State Constitution a schedule of maximum rates for fare and freight far lower than those now obtained, which rates shall be charged if for any reason the Legislature fails to fix a tariff. Such matter has never been embodied in the Constitution of any State, and the proposition to make it part of the organic law shows the desperate animosity of its authors towards the railways, and their determination to prevent the sober and reasonable regulation of the rate question by the representatives of the people, from time to time, as the facts and conditions shall seem to warrant. The proposed amendment contains a complete table of freight rates fixed to suit the fancy of the shippers, and very much lower than those which the railways consider it possible to operate their roads upon; while the matter of passenger rates is easily settled by declaring that they 'shall not be more than 2 cents per mile,' a rate to which none of the old and populous States in the country (excepting the case of a small portion of the New York Central Railway) has ever had the heart to restrict its railways. In view of the extraordinary conditions surrounding railway operations in California—some of which were shown in the extract which we recently published from the testimony of an impartial expert employed by the Railroad Commission—it is not creditable to the intelligence or sense of fairness of the people of California to believe that they will ratify such a monstrous enactment against one of the interests of the State as is thus threatened—an enactment in comparison with which the anti-railway legislation of the Granger demagogues of Texas appears mild and tender hearted."

EARL: Where is that published?

MELLERSH: In Chicago and St. Paul. I will file it with the committee, if they wish to have it.

Railroads, Mr. Chairman, are quasi-public in character. When people get an idea that railroads must reduce rates they don't exactly find out the cause, but they make up their mind it must be so. To convince them to the contrary is very much like the man, you will remember, who refused to wear clothing. When they asked him why he refused to wear clothing, "Well, when you can bring a man to me who will convince me why it is a sheep raises wool out of eating grass, I will wear clothing." That man went naked, and so he ought to. And so it is with us. We meet the people on any reasonable request. If they want special rates, we give them; and it does seem to me, that inasmuch as our company practically have pleased all of our patrons—because there is nothing on file, except two little citations, to amount to anything—it does seem hard, where we are struggling along for the purpose of trying to make a living—for the purpose of trying to give to the people some little return for the money they put in—it seems hard that the Traffic Association shall get up in their might and ask the Legislature to enact a law that will simply shut us out of existence.

It would not be very difficult, Mr. Chairman, to define two pictures. One shall be ten years hence, if you like. The sun is climbing, gilding the mountain tops, and as it climbs up the horizon, warms up our beautiful and fertile valleys; on each side you see trees in their blossom; later on, the golden fruit and the grain, undulating with the breeze; the people going or gone to their business, traveling in palace cars and palatial steamers; the people happy, and the population increasing.

The other side would be, the Legislature having enacted a law that shall practically crush out all little companies; that where these bright steel rails were, two lines of rust are; the grass overgrown, the cars and engines side-tracked, everything having the appearance of innocuous desuetude, the population decreased, this beautiful State—none better in the Union—instead of being prosperous, simply standing still, or perhaps, retrograding.

Mr. Chairman, I do not want to take any more time of your committee, but it does seem to me that we have given you such facts and figures as will clearly evidence to you why such a law should not be enacted in this State; in fact pleadingly, I might almost say pathetically, we ask you not to pass any law that will not let us make a return to the people who have invested in our property. How can we go East or across the ocean and ask people to come here and buy our bonds? How can we ask people to extend our roads and put their money in them, and have them say at the first legislation, "We get no return; why should we send our money?" This question, Mr. Chairman, will be further reaching than California. It does not stop at California. It will stop almost everything; it will stop our wheels; it will hamper our roads; it will stop our State ten years, in my opinion, if any such bill is passed.

And we now ask, gentlemen of the committee, that you consider this proposition most seriously, and not pass any bill that does not fix bases as high as they are now, so that we shall be enabled thereby to earn as much as we do now.

Mr. Chairman, and gentlemen, I thank you.

GESFORD: I think the line of argument in reference to these short roads will be about the same in each case. The road I would like particularly to hear from is the Southern Pacific Company, and I would like to have a time fixed for them; that is last on our list, and I have some other matters to attend to. Mr. Leeds is unable to be here, but I think I have the trend of the argument of all these short roads.

EARL: During the evening, Mr. Gesford, we will fix the time when the Southern Pacific Company will be heard.

GESFORD: Well, then, I will go before the other committees; most of this argument will be written out, anyhow.

The following statements were filed by Mr. Mellersh:

SAN FRANCISCO AND NORTH PACIFIC RAILWAY COMPANY.

Statement of Cost of Operating Steamers.

Steamer repairs	\$14,956 36	
Steamer expenses and wages of crew	36,667 51	
Dock repairs	3,783 37	
Fuel for steamers	36,427 97	
	\$91,835 21	
Rent of slip, \$1,400 per month	\$16,800	
Switching	5,505	22,305 00
		\$114,140 21
Percentage of cost to gross receipts, 12.87 per cent.		
Percentage of cost to gross expenses, 19.85 per cent.		

Comparative Statement of Replacement of Cross-Ties.

Names of Railroads.	Per 100,000 Ties Per Year.	1891.	1892.	Cost Per Tie.
S. F. & N. P.	\$14,500	1	1	35 cents.
C. N. O. & T. P.	20,000	1	1	30 cents.
A. G. S.	20,000	1	1	30 cents.
N. O. & N. E.	10,000	1	1	25 cents.
V. & M.	20,000	1	1	30 cents.
V. S. & P.	25,000	1	1	30 cents.

Comparative Statement of Cars per Train, Tonnage per Train, and Cost of Fuel.

NAME OF ROAD.	Average number of cars in pass- enger train	Average number of tons per en- gine mile	Miles run p'r ton of coal	Average cost per engine mile for fuel—Cts.	Lbs. of coal used per engine mile	Average cost of coal per ton
San Francisco and North Pacific Rail- way (162.25 miles)	4.1	63.60	45.86	16.10	50	\$7 25.47
Cincinnati Southern Railway (336 miles)	4.3	201.09	23.70	5.77	95	1 37
Alabama Great Southern Railway (295 miles)	4.9	178.98	30.00	4.55	74	1 36
New Orleans and Northeastern Rail- way (196 miles)	4.5	204.04	27.90	7.31	80	2 08
Alabama and Vicksburg Railway (140 miles)	5.1	213.40	32.50	5.80	69	1 88
Vicksburg, Shreveport, and Pacific Rail- way (170 miles)	4.6	126.31	37.20	7.51	60	2 79

CALIFORNIA DISTANCE TARIFF,
Applicable to Local Traffic between all Stations in the State of California, subject to the Western Classification, and the rules governing the same, which took effect January 1, 1893.

		Merchandise, in Cents per 100 Pounds.					Carloads of not less than Minimum named in Classification, nor more than Marked Capacity of Car.					Lumber, Lath and Shingles.
		1st Class.	2d Class.	3d Class.	4th Class.	5th Class.	Class A.	Class B.	Class C.	Class D.	Class E.	
No. 17—5 miles and under	S. F. & N. P.	5	3 1/4	5	3 1/4	5	3 1/4	3	3 1/4	3	3 1/4	3
No. 18—10 miles and over 5 miles	S. F. & N. P.	10	4 1/2	10	4 1/2	10	4 1/2	4	4 1/2	4	4 1/2	4
No. 19—15 " " " "	S. F. & N. P.	11	8	11	8	11	8	5	8	5	8	5
No. 20—20 " " " "	S. F. & N. P.	15	10	15	10	15	10	6	10	6	10	6
No. 21—25 " " " "	S. F. & N. P.	18	12	18	12	18	12	8	12	8	12	8
No. 22—30 " " " "	S. F. & N. P.	20	14	20	14	20	14	10	14	10	14	10
No. 23—35 " " " "	S. F. & N. P.	22	16	22	16	22	16	11	16	11	16	11
No. 24—40 " " " "	S. F. & N. P.	25	18	25	18	25	18	13	18	13	18	13
No. 25—45 " " " "	S. F. & N. P.	30	22	30	22	30	22	15	22	15	22	15
No. 26—50 " " " "	S. F. & N. P.	34	24	34	24	34	24	17	24	17	24	17
No. 27—55 " " " "	S. F. & N. P.	37	25	37	25	37	25	19	25	19	25	19
No. 28—60 " " " "	S. F. & N. P.	40	28	40	28	40	28	21	28	21	28	21
No. 29—65 " " " "	S. F. & N. P.	41	30	41	30	41	30	22	30	22	30	22
No. 30—70 " " " "	S. F. & N. P.	42	32	42	32	42	32	23	32	23	32	23
No. 31—75 " " " "	S. F. & N. P.	43	33	43	33	43	33	24	33	24	33	24
No. 32—80 " " " "	S. F. & N. P.	43	35	43	35	43	35	25	35	25	35	25
No. 33—85 " " " "	S. F. & N. P.	44	37	44	37	44	37	26	37	26	37	26
No. 34—90 " " " "	S. F. & N. P.	47	39	47	39	47	39	28	39	28	39	28
No. 35—95 " " " "	S. F. & N. P.	48	40	48	40	48	40	29	40	29	40	29
No. 36—100 " " " "	S. F. & N. P.	49	41	49	41	49	41	30	41	30	41	30
No. 37—105 " " " "	S. F. & N. P.	49	42	49	42	49	42	31	42	31	42	31
No. 38—110 " " " "	S. F. & N. P.	50	43	50	43	50	43	32	43	32	43	32
No. 39—115 " " " "	S. F. & N. P.	50	43	50	43	50	43	32	43	32	43	32

Barley, 4th Class; brick, Class E; broomcorn seed, Class A; beans, 5th Class; cement, Class C; coal, Class D; corn, Class E; clay, Class E; castor beans, 5th Class; flour, 4th Class; flaxseed, 4th Class; lime, Class C; live stock, 3d Class; mill stuffs and chops, 4th Class; oats, Class E; rye, Class E; salt, 4th Class; stucco, Class C; stone, Class E; sand, Class E; wheat, Class E.

STATEMENT OF W. F. RUSSELL.

(Representing the North Pacific Coast Railway.)

Representing the North Pacific Coast Railroad, I beg to state that no complaints have been made along the line of our road, either on the rates of fares or freights. From statistics compiled for the last year's business, the passenger rates over the North Pacific Coast Railroad average 1.38 cents per mile, and the freight rates, 3.99 cents per ton per mile. Under this Gesford amendment, it is proposed that roads of our earning capacity shall be limited to a charge for passengers of not to exceed 3 cents per mile, and for freight, according to that mentioned in the "California Distance Tariff," in conjunction with the Western Classification, which would at once reduce our rates on freight from 35 to 45 per cent, and which would compel us to do our freight business at an actual loss. The gross earnings per mile are \$4,478.

Being in direct competition with water on one side and a railroad on the other, we are to-day hauling the chief products of Sonoma and Marin Counties at such rates as compel us to carry north-bound freight at our present tariff rates, and the rates on these products are computed at almost first cost. Seventy-five per cent of the earnings derived from freight traffic on this road cover that brought to San Francisco, thereby compelling 50 per cent of our returning freight cars to be hauled back empty; and, owing to the mountainous country through which we travel, the expense of hauling these loaded cars over these steep grades and sharp curves leaves a very small margin of profit.

Again, all the goods that go to or from San Francisco have to be handled or unloaded by us, thereby reducing our freight charge per ton, in some cases, 30 and 40 per cent. Take coal, for instance, where we have to load and haul between San Francisco and San Rafael for \$1 per ton. This, coupled with the enormous passenger and freight ferry terminal expense, really reduces our freight charge below that charged by many Eastern roads, because such California Distance Tariff does not calculate on our doing any handling.

Another serious objection to this proposed amendment is the change in classification, which makes an entirely different classification on many articles from that which has been in effect on this road for many years.

One reason for the heavy cost of hauling freight over the North Pacific Coast Railroad, is the cost of fuel. Our coal last year averaged us a cost of \$7 81 a ton, and wood \$3 a cord, and computing two cords of wood to a ton of coal, our coal, even on the very best proposition, would cost us \$6, which is more than double the cost of coal in the East. Labor costs much more here than it does in the East, and we are running through a country composed chiefly of timber land and dairies, giving us very small opportunity to obtain return freight for the cars hauling down the products of the country through which we run. We have got a road that is all grades and curves, and are really without a straight line in it, and to subject us to the same terms and conditions of a road that is perfectly level, running through a thickly populated country, is discriminating against us to the cruelest extent.

We have been in operation now since 1874, and have never yet been able to declare a single dividend to stockholders, and have had to care-

fully watch every cent of expenditure, and at the same time are compelled to spend vast sums every year maintaining our bridges, all of which are sustained at great expense.

MR. EARL: How long is your road?

MR. RUSSELL: Eighty-six and three quarters miles.

STATEMENT OF L. T. GARNSEY.

(Representing the Redondo Railway.)

To the honorable the Senate Committee on Constitutional Amendments:

GENTLEMEN: In reference to the pending bill now under discussion before your honorable body, in which there seems to be a disposition on the part of the originators to arbitrarily fix the rates of fare and traffic over the lines of roads in this State, we beg the privilege of submitting our views.

Firstly, in making such rates obligatory and a part of the Constitution, in our judgment is not only ruinous to all the railroad interests now in operation, but to the commercial and agricultural prosperity and development of our entire country. In treating of this question it would seem that the spirit of selfishness should be laid aside, and that we should be actuated by that principle of justice and equity that gives to each and every man a fair and reasonable compensation for his labor and the money invested. In digesting the present bill the solution of the promoters is apparent. To kill the goose that laid the golden egg seems paramount to future prosperity and to all other issues. The argument advanced by these so-called promoters is, that they know it all, and that unsupported statistics have greater value, and should be given more credence and weight, than actual facts. It must certainly be evident to any careful observer that if this bill now before your committee passes, it will work great hardships upon those having money invested in railways, and for the following reasons:

1. It is impossible to compare California with such a State as Kansas, because of the totally dissimilar geographical features. The topography of California is broken up by vast mountain chains and rivers, which, because of these mountains, become raging torrents when fed by melting snows or heavy rainfalls, or both together. These conditions, first of all, compel an immense outlay of money in construction, in order to provide for tunnels, heavy cuts, large fills, long bridges, strong trestles, and an abundance of culverts and water drains. On the other hand, Kansas presents a comparatively flat country, with streams which may overflow their banks, but not with the disastrous consequences following such floods in a country of high mountains and low valleys. The construction of railways in the kind of country as represented by Kansas is, therefore, much cheaper than such a country as California.

2. The cost of maintaining and operating a railroad in California is very much greater than in Kansas or any other country of like character, because of the tunnels, bridges, trestles, grades, etc. The pulling of loads up hill or up grade burns more fuel and is a greater strain upon the rolling stock than through flat countries by quite a large per cent, besides causing more wear and tear upon both rolling stock and track.

3. In California fuel is much more costly than in the Eastern or so-called Western States; wages are very much higher, and material of all kinds is very much more expensive.

4. One other item is of great importance, and one that should receive careful attention in the consideration of this subject, namely, the sparsely settled condition of California as compared with the country east of the Rocky Mountains. This is of prime importance, because the larger the volume of business the cheaper the business can be handled. If in countries thickly settled throughout passengers can be carried for 3 cents a mile at a profit, there is no reason, however, why they should be carried for the same rate in California, even though there were no topographical difficulties, and the wages, fuel, etc., were the same; but they are not, they are higher, much higher. Therefore railroad companies in California should receive much larger compensation for the same amount of work performed than those situated in more populous districts.

5. Another and more important fact should not be forgotten. We require more railroads to develop our country and create new industries. We should not lose sight of the fact that to encourage capital should be one of the incentives in governing our actions. It is a well-known fact that capital will never seek investment when handicapped by constitutional amendments that in effect almost absolutely prohibit a fair return on the money invested. In other words, would it not be in effect the abandonment of all new railroad enterprises for years to come, thereby retarding progress and preventing competition? I am of the opinion that such would be the result, and that the prosperity to which we are all endeavoring to attain would be best subserved by that fostering and encouraging attitude that would enlist new capital, build up the country, and place our noble and illustrious State in the front rank of sisterhood, where she rightfully belongs.

L. T. GARNSEY,
Representing Redondo Railroad Co.

The above is submitted as my views, as representing the Redondo Railway Company. In my individual capacity I will say, I am not biased in favor of railroads, as my private interests in horticulture and agriculture are at least 95 per cent greater than in railroad enterprises. My sole object is to get better results and a larger income from my investments, and a more extended market for my products, thereby I wish to encourage any and all enterprises that will lead to that end.

It appears to me that the nucleus of our future success is more and better railroad facilities, thereby creating competition which will force rates and tariff to seek their proper level, without the aid of ambiguous legislation. By the way of illustrating, permit me to call your attention to the following facts which appear pertinent to the case. For many years I was the largest wholesaler and shipper of foreign and domestic fruits in a number of New York's flourishing interior cities. This is an industry in which we in California are now largely interested, and which bids fair to outrank all other products of the State. By virtue of circumstances, I was forced to give more or less attention to railroad rates, to overcome New York city's competition and protect my trade.

In my investigation of rates in California as compared with classifications and rates East on these goods, I find them scarcely any higher, and in some cases proportionately lower. For instance, the rate on oranges and lemons from Colton and Redlands to San Francisco is but \$75 per car of twenty thousand pounds, a haul of five hundred and fifty miles; from Santa Ana, Tustin, and thereabouts, a haul of five hundred and twenty miles, \$60 per car. On the same quantity of goods East for a number of years, I considered myself very fortunate in getting them carried the distance of two hundred miles for \$50, or a fraction above one third the distance at two thirds the price; you will notice the pro rata rate being largely in favor of California. The tariff on the same class of goods from Colton, Redlands, and thereabouts, to Chicago, a distance of over two thousand seven hundred miles by the Southern Pacific Railroad, is \$250 per car of twenty thousand pounds, which is very low, considering that nearly all fruits of this character are shipped in refrigerator cars of twice the weight of ordinary box cars, requiring double the power to make the haul, and as I understand it, the larger portion of these cars return empty for re-loading, adding thereto another large expense. Estimating this with the immense grades, large cost of maintenance, and operating, and the much greater cost of fuel, it would in my judgment, seem that present rates were reasonable, and that shippers were fairly and honorably treated.

Respectfully submitted.

L. T. GARNSEY.

STATEMENT OF W. S. WATERMAN.

(Of the San Diego, Cuyamaca, and Eastern Railway.)

GENTLEMEN: I do not know that I have anything new to present to this committee. I wish, however, to join with those who have preceded me in objecting to the passage of the proposed amendment. I also wish to object to the passage of any law that will have a tendency to bring the railroad into politics.

I represent the San Diego, Cuyamaca, and Eastern Railway, which runs from San Diego eastward over the mesas, and through Spring Valley and El Cajon Valley. These valleys, and also the mesa lands, are fertile and productive, and are under the waters of the San Diego Flume Company, and the country is improving rapidly. The road was built for the development of the country through which it runs. It was also the intention of the projectors to build the road to a connection with the Southern Pacific Railroad, at or near Salton. This road was built in 1888 and 1889, and was formally opened in March, 1889, to Lakeside, a distance from San Diego of twenty-two miles. Later on 3.37 miles additional was built, to Foster. While the road has always done considerable business, its rates of freight and passenger fares have been comparatively low. The passenger rate is 4 cents per mile, and our freight rates are:

First class	22.4 cents per ton per mile.
Second class	20.0 cents per ton per mile.
Third class	14.2 cents per ton per mile.
Fourth class	12.0 cents per ton per mile.
Fifth class	9.6 cents per ton per mile.
Average	14.2 cents per ton per mile.

Class A	9.6 cents per ton per mile.
Class B	8.8 cents per ton per mile.
Class C	7.2 cents per ton per mile.
Average	8.2 cents per ton per mile.
Raisins	8.3 cents per ton per mile.

The proposed rates are from 25 per cent to 45 per cent lower than these. In spite of low rates the road has always paid its running expenses, has put some money into betterments each year, and has been paying for its rolling stock in payments amounting to about \$500 per month. The gross earnings are \$1,476 25 per mile, and the cost of operating per mile \$890. Of the gross earnings, 47 per cent is from passengers, and the balance is from freight. I run two trains each way a day, all being, when occasion demands it, mixed passenger and freight trains. The freight which we haul out of San Diego is general merchandise, lumber, piping, and building materials. The freight which we haul into San Diego is rock, hay, grain, wood, wool, and fruits of various kinds. The largest one article, excepting rock, is hay, followed by raisins, and then by oranges and lemons. There are several thousand acres of young fruit trees just now coming into bearing, which are beginning to swell our freight receipts. Regarding the rock which we haul, I wish to say that it is used for street paving, building material, and for cemetery work. From this source alone we expect to double our present earnings, possibly more than that. From the prospects before us we have a right to expect to belong to that class of roads that earn \$4,000 per mile and upwards, and that in a very few years. For that reason we consider that we have as much interest in this proposed amendment as any road has. This road, though it has done better than many roads in this State, has yet never paid interest on the money invested in it—some \$400,000. The interest on this amount for the four years of the road's existence is \$100,000. We certainly have a right to consider the accrued interest as an investment, and when this road earns money enough to pay interest on \$400,000 and the then accrued interest, I believe we are entitled to it, and also to something more, for the risk we have taken in building a road to develop a country before the country could pay for its own development. Furthermore, I believe the patrons of this road think in the same way. There is a general feeling of satisfaction among our patrons regarding our rates and our service.

Even if this road earned over \$4,000 per mile, when the expenses, cost of accidents, cost of replacing worn-out material, etc., are all considered, the profits to the stockholders will be small enough to satisfy anybody.

It is a mistake to think that all the railroad has to do is to sit down and let business come to it. It must look after business, and work up and encourage business, just as one must do in any other line. Many a time a good business is secured simply by hard work. What is the object of hard work, if by it one is to decrease their net income? The absurdity has already been brought to your notice of placing a road in a position where, if it increase its business it diminishes its income. I also wish to ask you if you think such a state of affairs would be beneficial to the country through which any special road runs? I think it would be decidedly detrimental, and I believe you think the same.

We are also contemplating an extension of this road into valleys that are further up in the mountains. The question naturally arises, is it safe to invest more money in an enterprise that is subjected to this kind

of adverse legislation? Certainly not. I would not put my own money into such a scheme, and I believe other people would not, either. It seems to me that the result of this kind of agitation will be to make people backward about investing money in this State, and I am equally satisfied that the passage of such a law would effectually and forever stop railroad building in California. We all wish more railroads, and I sincerely hope that this Legislature will not do anything either to hamper those already built, or to have a tendency to keep other railroads out of the country. I might add, in closing, that I consider arbitrary fixed rates, such as those proposed, as entirely wrong. If fares and freights must be regulated in some way, let them be regulated first, on the cost of road, second, on the cost of operating and maintaining.

STATEMENT OF GROVE L. JOHNSON.

(Representing the Visalia and Tulare Railroad.)

MR. CHAIRMAN: I appear here to-night in behalf of the Visalia and Tulare Railroad Company, which is what may be denominated a little railroad. It is only eleven and a half miles long. It is owned entirely by residents of Visalia and Tulare. It is owned by the people. There is no question of foreign capital. There is no question of wealthy monopolists, no question of powerful corporations. Simply a question of little railroad, owned by the people, built for the people, and used by the people; and being part of the people, appears before you as representatives of the people to ask that it be not injured by what it deems improper, impolitic, and unwise legislation. This road was built more especially for the benefit of the people of Visalia and vicinity. To the people of Visalia this road and its competitor was an absolute necessity. We have a map here—the map that is published by the Railroad Commissioners—by which is shown location of Visalia and the location of this road, and location of branches of the Southern Pacific. I will explain it by saying that Visalia is situated in the center of a loop, formed by two branches of the Southern Pacific, and deriving no benefit from either branch, standing by itself, isolated, the Southern Pacific a positive injury to it—of absolutely no value—leaving it some miles to the east, and some miles to the west.

The people of Visalia, then, in order to obtain railroad communication, were obliged to build railroads for themselves. One was built from the town of Goshen, on the line of the Southern Pacific, extending to Visalia, which is known as the Visalia Railroad, which is seven miles long. Another was built, commencing at a station known as Tulare, and running to Visalia, which is known as the Visalia and Tulare Railroad, eleven and one half miles long. Those two roads were built, both of them, by the people, and they are absolutely, as I said, a necessity for Visalia, in order that the people of Visalia may obtain advantages of railroad communication; they are a necessity to the people. They are not in any manner, particularly the railroad that I represent to-night, interested in or connected with the Southern Pacific Company, excepting as being a feeder or being fed by the company. They exchange business with it, the same as other business men exchange business with men of their own character, and men engaged in the

same line of business. It has no affiliations; it is not controlled; its stock is not owned by the Southern Pacific Company; it is not managed by it, or controlled by it, or responsible for anything it does.

This road, the Visalia and Tulare Railroad, cost about \$115,000, in round numbers. It has a bonded indebtedness of \$50,000, carrying 7 per cent interest; it never has paid any dividends; it lives in great expectations; it has hopes for the future. So far, no one has ever complained of it. It does not corrupt any newspapers or members of the Legislature, nor anybody. It does not interfere with anybody, but it lives, as I have said, upon expectations of what the country will become. Within the last few years some 6,000 acres in the immediate vicinity have been set out in fruit trees. The expectations of the owners of this company, and the owners of the other company is that in a few years the country will increase in population by more than double—quadruple—and the business derived from carrying the fruit from this immense orchard will raise their revenues, and enable them to not only pay their interest, but, perhaps, to obtain some little return on their money. They have in contemplation the extension of their line from Visalia into the mountains, for the purpose of holding the local trade. As it is now, a large number of people in that vicinity seek the coast to get rid of the heat of summer. Their proposal is to extend the road into the mountains, to make summer resorts there, where not only the people of Visalia and that vicinity will go, but where people from San Francisco, seeking a summer resort, will also go. They will benefit the people not only of that vicinity, but of the whole State. This they are willing to do and expect to do, if their business is allowed to continue. This road, the Visalia and Tulare Railroad, and the Visalia Railroad, are almost the only instances in this State where roads are directly in competition with each other, and I may say this is the only instance in the State where the competition is such that if this bill becomes a law, one railroad will be ruined, and perhaps the other railroad will be benefited. The competition between the roads is such that although one is seven miles long, and the other eleven and one half miles long, they charge the same rates of fares, and the same rates of freight, and by reason of it they will be amenable to the same rules if this bill becomes a law.

Now, if you will pardon me, before going into detail more, in reference to these two roads, and in reference to the effect upon them of this proposed legislation, I will say a few words of a general character, in reference to this proposed legislation. Now, this resolution is a great and a radical change in the law of California. As you all know, in 1879, the people of this State adopted what is known as the New Constitution, which was a new departure, and which was supposed to be the adoption of a Constitution that would take the railroad question out of politics; that would take the railroad out of legislation, and would place the railroad question with a Commission of three gentlemen, elected by the people of the State, and in that way it would be in the hands of men who would make it a study. In that way it would be in the hands of men who would attend to it, and in that way the people would be freed from the railroad question, and the time of the Legislature would not be consumed, nor the members vexed in considering a question fraught with so much difficulty, and which from the wreck of reputations in the history of this State, is fraught with so much danger to the members of the Legislature.

It was also intended by the Constitution that there should be no more class distinctions, no more arbitrary distinctions in this State—that everything should be put on a level; everything should be put on an equality. There should be no more special legislation; no more legislation directed at one particular thing, one particular company, one particular interest, one particular corporation, or one particular set of men; that everything should be general in its nature—general in its character. So anxious were the framers of this Constitution to have that principle ingrafted in the Constitution, that they took particular pains, in various sections of the Constitution, to enact that, and say that special legislation was prohibited, and to provide in the Constitution for almost everything the people needed, in order that there might be no legislation, and in the articles providing what the Legislature could and could not do in reference to special legislation, it winds up by saying they shall not pass local or special laws in any case where a general law will apply, showing it was the object and aim of the people of the State, at that time, to prevent any more special legislation, any more arbitrary distinctions, any more class distinctions, and leave everything, as I said, on an equality.

Now, for nearly fourteen years we have lived under that Constitution. Some people thought that it was not a good Constitution. Some people thought that it was defective; that it was injurious to the State; but the State has prospered, the State has succeeded, and the forms of special legislation that are growing so powerful and strong in California have, to a great extent, been curbed, and the State to-day is more prosperous than ever before. And while I was one of those who opposed the new Constitution, I am forced by the logic of my convictions to admit that the crusade against special legislation—the laws against special legislation—the constitutional enactment against special legislation—has resulted in good to the State. Now, after living under it for fourteen years, it is sought to change it. It is sought to make a radical change—wonderful change in what for fourteen years, nearly, has been the law in this State. It is sought now to have some more class legislation—some more arbitrary distinctions—some more distinctions not based upon anything, except a desire to have a distinction. Now, when anybody asks for a change to be made, especially such a great and radical change as this, good reasons should be offered. When any one is asked, and the members of the Legislature are asked to impose arbitrary classifications upon the people, good reasons should be given. Is not that true, and is it not true for two reasons—first, when any one asks to make a change, there ought to be a reason for it. If a man buys a new coat, he has a reason for it; if he buys a new horse, he has a reason for it; if he changes his condition in life, and gets married, he has a reason for it.

In everything we do there is a reason for it, and now, when you come to make an arbitrary distinction, a distinction without a reason, a distinction founded simply upon feeling, then reasons ought to be given that will be satisfactory, not only to the persons asking us to make these distinctions, but satisfactory to every person that votes for them, and satisfactory to the people that are to be oppressed or benefited by this arbitrary distinction. Now, Section 3 of this present resolution provides arbitrarily for two classes of railroads in California—arbitrarily sets up two classes of railroads: one, those earning annually

over \$4,000 per mile, and second, those earning less annually than \$4,000 per mile. Now, why is this? It makes by one sweep of the pen two classes in this State. It divides the railroads of this State in twain, exactly as you would cut a piece of bread or cheese with a knife. Now, why is it? Has any reason been given for it? If so, what? Is there any such consensus of opinion among railroad men, amongst people who have given their time, their money, and their labors to the elucidation of railroad questions, as convinces the members of this railroad committee that \$4,000 is the necessary legitimate result of the full fruition of labor in railroads?

If so, when, and where, and how? This is an arbitrary distinction, \$4,000 per mile. It is asked of you that you make that distinction. It is asked of you that you say by your votes that \$4,000 is the limit. That up to \$4,000 a mile the Legislature can act in reference to railroads. Over \$4,000 a mile it cannot act. Why? Have any facts and figures, any proof, or any evidence been introduced here? Has there been any legislative or congressional committee and their report been presented to you which shows that this limit is a necessary and legitimate limit? Is it true that the railroad which earns more than \$4,000 per mile in gross, should be treated any different from the railroads which earn less than that amount? If so, why? It is an arbitrary distinction. It is a distinction not based on anything but the mere arbitrary will of the Legislature. Why not take \$5,000, \$3,500, or \$6,000? Is there any reason given for it? Is there any reason given why this should be put in the Constitution and say that \$4,000 per mile is the proper limit for railroads?

We have been told in the past that it was wise to limit the number of acres of land that a man could own. We are told so to-day. But no man yet has agreed upon the number of acres a man should own. I have heard men owning forty thousand and fifty thousand acres argue strenuously in favor of limitation upon the ownership of land, but no man yet was in favor of reducing the number of acres that he held, except by sale. So in this, is there any real reason for taking \$4,000? I have listened attentively to the arguments here. I have read everything that has been published by the newspapers in regard to it. I have not seen—I have not heard it. I have heard of people saying—making an argument addressed to the committee in favor of the bill, but what I am speaking of is, where is the evidence, where are the facts, where are the figures?

Some of you gentlemen I know to be lawyers. One Senator I am not acquainted with. I do not know his profession. But you lawyers know that persons seeking a thing, having the affirmative, must introduce proof, because the rule of law is that he who has a complaint must file proof. Has any proof been introduced here, conclusive in this matter? If so, where, and when, and how? Is any rule which makes a railroad earning less than \$4,000 better or worse than one earning over—does it make them any more wicked? Is the railroad earning less than \$4,000 less liable to be corrupted than the one earning more than \$4,000? If so, is that to be the maximum and the limit?

And up to \$4,000 per mile you are honest; over \$4,000 per mile you are dishonest. Up to \$4,000 per mile you can be trusted by the Legislature of this State. Over \$4,000 per mile you become a highwayman, with your hand against every one, with the desire to rob, and to get the

best of the people. This arbitrary decision of over \$4,000 per mile, why is it on that basis? It is such a radical departure, such a tremendous change, and it makes such an arbitrary distinction, that it seems to me that the very best of reasons should be given for it—the very best of reasons, not the mere statement of opinions. I grant you the eminent ability of the gentleman, as well as every gentleman in favor of this bill. I grant you all that may be said by any person in reference to the years that he has spent in railroad study. I grant everything that may be said as to his memory—everything that his friends may say of him. I admit, I grant it all, and yet I say that his opinion ought not to be received by this committee as conclusive.

If there is to be a “bed of Procrustes” in this State upon which all railroads shall be placed, and should they reach over \$4,000 per mile they shall be cut in two, as were the guests of Procrustes in ancient times, there ought to be some good reason for it. The only reason adduced here for you gentlemen considering this bill, is that, like Procrustes, you have got the power to do it; that is all; no other reason on earth. You have the power to do it, therefore should do it. Is that a reason to be addressed to members of the Legislature? Should it be a conclusive reason for changing the legislation of the State, for changing the Constitution of this State, for overturning the work of the people, for overturning the way the people have lived for the past fourteen years, and making an arbitrary distinction? This is something which should be justified—something that you gentlemen will be called on to justify on your return to your constituents, because your votes here are simply the expression of your individual ideas.

You represent some persons. You must report to your constituents. Are they interested in this? If so, where is the evidence? Are they believers in these reasons? If so, where and how have they been convinced, and how shall you be convinced? Now, I argue the question, whether before the committee, or before a Court, upon what I believe to be the correct basis and the legal ground. I differ from the learned gentleman who addressed the committee some three nights ago. I grant your power. I admit that the Legislature has the power to grant this constitutional amendment. I admit the people have the right to adopt it. I admit, if the people adopt this Constitution, it becomes a Constitution. Special charters, general charters, special laws, general laws, special privileges and general privileges, the charter of a corporation which forms a little road, the charter of a corporation which forms a large road, the charter of a corporation or a company that is transacting a few thousand dollars a year, or of a company that is transacting hundreds of millions of dollars a year—all become amenable to the Constitution, in my judgment.

If this resolution passes the Legislature, and if the people ratify it, it becomes our Constitution, and all must bow down and obey it; and to take our special charters is, to my mind, somewhat misleading. And inasmuch as you do have that power, inasmuch as the people have the power to adopt this Constitution, and inasmuch as if the people do adopt this Constitution, it strikes so powerfully, it becomes so drastic, it is such a wonderful change, and it does bear with such a heavy hand on all the railroads in this State, that more than ever you should be very careful, it seems to me, and you should ask for the very best reasons in the world. A mere opinion should not always count. No matter how

learned the man may be who says this ought to pass, there should be facts, there should be figures, there should be reasons given for it. As for the abolishment of the Railroad Commission, I will speak of that a little later; but first, I want to call your attention to the effect that this will have on the Visalia and Tulare Railroad Company, if it should be adopted. As I said before, the Visalia and Tulare Railroad is in direct competition with the Visalia Railroad. The rates are necessarily the same.

The Visalia Railroad is seven miles long. It charges 50 cents for fare from Goshen to Visalia. The Visalia and Tulare Railroad is eleven and a half miles long, and charges 50 cents for passengers from Tulare to Visalia. The rates on freight are the same on both roads. Now, then, they are in, as I say, direct competition. Each road does just about the same amount of business. The Visalia Railroad being the shorter railroad, has therefore larger apparent gross earnings per mile. The Visalia Railroad mileage being only seven miles, its gross earnings are about \$3,000 per mile. The Visalia and Tulare Railroad being longer—its mileage eleven and a half miles—its earnings are less than \$2,000 per mile, although it receives about the same amount for freight and passenger traffic as does the Visalia Railroad. The business prospects of both of them are about the same. They both expect an increase in population; they both expect to derive money from the fruit trees that I spoke of; from the people that are expected there; from the subdivision of the large land holdings. And in about two years it is confidently expected by the owners of the Visalia Railroad that its gross earnings will be over \$4,000 per mile; but the Visalia and Tulare Railroad will not reach that amount. Being, as I said, eleven miles long, and charging exactly the same rates, it, in all human probability, cannot hope to be more than \$3,000 per mile at the same time the Visalia Railroad reaches \$4,000 per mile. Just the moment that the Visalia Railroad reaches \$4,000 gross earnings per mile, then the rates must be lowered, because this constitutional enactment says so, and its rates of fares will be lowered about 60 per cent, its rates on freight lowered 36 per cent, in order to conform to this constitutional provision. Now, the Visalia and Tulare Railroad will not, at that time, be earning \$4,000 per mile. It will only be earning \$3,000 per mile under the most favorable auspices, and with the most favorable results, and yet it must also, by reason of the law of competition, lower its rates to the rates which will be charged by the Visalia Railroad, because it is in direct competition; and it cannot do any business if it charges more than the Visalia Railroad, under the provision.

And if the Visalia Railroad, under the constitutional provision, charges only 22 cents for people to go to Visalia, the Visalia and Tulare Railroad cannot charge you more than 22 cents, either, because if it does charge more, it will do no business. If the Visalia Railroad reduces its charges 36 per cent, as it will necessarily be obliged to do, immediately the Visalia and Tulare Railroad must reduce its rates 36 per cent, in order to compete with it, and then the Visalia and Tulare Railroad, which at that time earned, if it earned as much as its projectors hope it will, which will be \$3,000 per mile, under those rates it will be reduced immediately down to \$1,200 or \$1,300 per mile, and will be obliged to suspend business. It will simply have to quit, to use the language of the street. It will have to stop, being brought into competition imme-

diately with this other road—in direct competition. The rates, as you know, are always regulated by competition, for we are told here by every person—we are told here by the gentlemen who favor this bill, as well as those who oppose the bill—that competition is the surest thing to regulate charges of railroads. We are told that in the East one reason why rates are different there is because of the great competition. We all recognize it. It is the same with the railroad business as with any other business. If it was not for the competition between lawyers, it would be almost impossible to pay their exorbitant charges. And so it is with railroads. Competition is what makes business; and I don't care how politic a man may be, I don't care how much a man may desire to have a little railroad he believes in succeed, if he can ride over an opposition road for 22 cents he is not going to pay 50 cents to ride over a road owned and controlled and operated by his friend.

It is not human nature, and this Visalia and Tulare Railroad will be obliged to reduce its rates of freight and fare to meet the competition of the Visalia Railroad, which has been obliged to reduce its rates by reason of this constitutional provision. Now, is that fair? Is it right? Is it just? I don't speak of any vested rights. I don't wish you, gentlemen of this committee, to understand me as saying that I think any man has the right to stand up here and say, "you can't take this away." I grant that you can do it. I grant, and I understand that you have the power to confiscate this road. I grant that you have the power to kill this road. But what I say is, that if you do pass this bill, if the people indorse your action and make it a part of the Constitution, you do kill this road; and I ask, is it right to do it? Is it right to ruin it, even? Is it right to pass any bill which will have a tendency to cripple or kill any interest, particularly an interest like this little road, which has no enemies, against which no complaints have been made, which is neither an object of envy nor an object of hate to anybody within the State of California? Is that doing what will advance the interests of the people? Is that in accordance with the oath that every man took as a member of the Legislature, to support the Constitution, which guarantees equality to all? If so, where are the facts? Where is the evidence which authorizes and demands that such be done?

Of course, we are informed through the newspapers, which sometimes get things right, we are informed through the medium of Mr. Leeds, who I understand to be the real author of this bill, that they are not seeking to make war upon the little roads; that they are only anxious to grapple the large road; to throttle the monster, as they call it, and to seize hold of the Southern Pacific Company, and, metaphorically speaking, to choke it, and compel it to submit to wholesome legislation. Inasmuch as the author of this bill, inasmuch as the friends of this bill, inasmuch as the newspapers that favor this legislation, inasmuch as all the people who seem to favor this legislation, are united in one voice, and say that they don't wish to injure any little road, we are here representing a little road, and ask you to protect us. We ask, if you feel compelled, either by your own feelings or the quality of the evidence that may be brought before you, if you feel that it is due to the public opinion, if you feel that there has been built up in this State a sufficient anti-railroad feeling to justify you in voting for such an amendment as this, if you feel that you can go home and justify it to your constituents, if you feel that it is the opinion of the people of the State

of California, that are always right, although they may at times make mistakes, if you feel that the people will sustain you, then I ask you, in the name of every man who says he favors this, to protect the little road, and get the big road that you want to hurt. Protect us. The little road cannot protect itself against competition. The little road cannot protect itself against the big road.

If you are going to make class distinctions, if you are going to make arbitrary distinctions, make them in such a manner that all the little roads will be safe from injury; and unless you can do that, we say it is not right to pass a law which will have a tendency to injure them. The strong can take care of themselves. The weak need protection from the Legislature. It is good to have a giant's power. It is wicked to use that power like a giant. You gentlemen have a giant's power. You can kill these little roads. We ask you not to do it. We ask you to study this matter carefully before you pass any measure which will have the tendency named, which will simply result in killing these little roads.

We ask you, before you make any such radical changes in the Constitution of this State, which change is so great that the very mention of it makes people shudder, we ask, before you revolutionize the Constitution of this State and reform the laws pertaining to railroad legislation, we ask you to be careful and eliminate from it everything that will injure the weak, and if you desire to strike at the corporation that is deemed powerful, strike directly at it. You have the power. If you have the power to pass this, you have the power to pass a resolution directed solely at the Southern Pacific Company. And I say, why not meet the question fairly? Why seek behind a general law and a general purpose to cover the real design? Assail the Southern Pacific Company. It will welcome you. Assail it in any way you choose, but leave the little roads alone. If the Constitution of the United States will permit the passage of a constitutional amendment in the State of California, such as is here proposed, it will permit the passage of a constitutional amendment to strike directly at one road and leave all others alone. Of course, that would be class legislation. Of course, they won't ask you to do that. Why? "Because," they would say, "the people won't stand that. The people would say that you are actuated by the desire to crush one particular company." But the result of this legislation, if you pass this bill, is exactly the same as if you assail the Southern Pacific Company alone.

Now, I haven't a word to say against Mr. Leeds. He has devoted a good deal of time to this matter. I wish he were here to-night, that he might ask me a few questions, and I might have the privilege of asking him one or two questions on this matter. I grant he has given many years of study to this tariff question, and I grant his honesty of purpose. I believe him when he says he is working for the benefit of his employers. I grant he can present their views to this committee with ability second to none. I grant he is doing the best he can. But I seriously object to the conclusion he draws. I most seriously object to his proofs, and I do deny the logical deduction he seeks to draw therefrom. Now, it is admitted, gentlemen, that this new Constitution, that this amendment to the Constitution—it is admitted that it is an anomaly—that it is an innovation. If this bill is correctly represented, it is an innovation upon the Constitution of the State. Leaving out of the question whether

there is any great public clamor in favor of this particular amendment to the Constitution, let us for a moment ask ourselves a question. Is it dignified to put a mass of figures like that in the Constitution of this State? Is it statesmanlike to do so? Is it in accordance with the intention of the framers of this Constitution? I believe you know, and I believe every one in the State believes it is not. Was he following out the designs of the public, the wishes of every community or not? It should contain direct statements, plain propositions and figures. Figures are exceedingly proper in reports, but out of place in the Constitution. A Constitution should contain something that everybody can understand—lawyers and laymen—whether he is a railroad expert or a mere citizen, paying for his travel on the railroad and paying for the transportation of his freight.

But if we grant for the sake of argument that it is a good plan to put a mass of figures in the Constitution—if we grant for the sake of argument that a mass of figures such as here contained in three pages of this bill, that we shall put that in the Constitution—whether it is plain, or whether it should be made plain; if figures are to be placed in the Constitution, they should be there so that the common people can understand them. I have as great regard for the people as you have and we all have. I think everybody should be able to understand the Constitution which governs him, and if you are going to have figures in the Constitution, let them, as I said before, be such that everybody can understand them.

What man can memorize such a mass of figures as that classification? What man, whether familiar with figures or not, can memorize that classification and tell what it means? The putative author of this bill, the Honorable Senator Gesford, cannot do it. The real author of this bill, Mr. J. S. Leeds, cannot do it. There is not a man on earth that can take those figures and memorize them, or read them and understand them. Why? Because they are not complete—because they are not complete. Because it requires an outside book or a paper to explain them. Because it requires something besides the figures. For it so says here, in section three, that this Distance Tariff shall be applicable to all freight traffic between all stations in the State of California now established, or that may be hereafter established:

“The classification of property provided for in this Distance Tariff is based on the Western Classification, and rules governing the same, adopted and issued by the Western Classification Committee, of which J. T. Ripley was Chairman, and which took effect January 1, 1893, to which said classification reference is hereby made; provided, however, that no rule or rules governing said Western Classification, providing for any change, modifications, or additions to the classifications mentioned in this California Distance Tariff, shall have any application hereto.”

Let us consider now—laying aside the question whether J. T. Ripley is deserving of so much of the people of California, that he should be immortalized by having his name inserted in the Constitution of the State of California, as being the only man in the United States of America that deserves having his name printed in the Constitution that is to govern us for any and all time to come—leaving that out, leaving that out of the question as to whether this classification committee is composed of men of such standing and ability that they are to be immor-

talized in the State of California—leaving out of view, any and all questions as to whether figures should be put in the Constitution or not, you will see, gentlemen, from the reading of these figures, they are meaningless. They are like unto the hieroglyphics of the Pyramids of Egypt that remained for centuries unsolved, until they discovered the “Rosetta stone;” they remained unknown until the “Rosetta stone” was resurrected. The inscriptions on the Pyramids could not be read until the resurrection of the “Rosetta stone.” And when a man takes the Constitution of the State of California and tries to read it, he says, “What does it mean?” He cannot read and understand the figures, but he looks at it and tries to make it intelligible. He observes the name of J. T. Ripley. “Who,” he says, “Who is this J. T. Ripley? I don’t know. Where did he come from? What has this J. T. Ripley done that he should be immortalized in this Constitution, without any reference to his great achievements? How did he acquire this preference?” But, we have a “Rosetta stone” in the book published by the Western Classification Committee, with which to read our Constitution. Is not that a terrible state of affairs? A terrible state of affairs for the Constitution of this State.

Now, a man hereafter elected to the Legislature of California appears in the Senate Chamber, and there, before the Superior Judge in this country, swears that he will support the Constitution of this State—swears that he will support the Constitution of California, and the book prepared by J. T. Ripley! That is our Constitution! That is your Constitution, and you are asked to make that Constitution. You are asked to label that Constitution as being a proper one for the people of this State to live under, and you are responsible for it. If anybody hereafter finds fault with this Constitution, it will be you, gentlemen, who will receive all the blame. Of course you will receive all the praise if this proves a benefit to the State, but can you afford to run such a chance? Now, is that right? Is that good policy? Is that good law? Is that good sense? Is it American? Is it constitutional? We are told in history that the old Sibyl of Rome came to the Emperor with certain books to sell; there were nine of them; she demanded a very large sum; he would not pay it, and she went away. Then she came back with only six books, and demanded a still larger sum, but he would not pay it. Then she went off and returned again with three books, and demanded a still larger sum, which he refused to pay. She went away, and the books were lost.

Now, suppose this book were lost—where would we be? They say that railroad companies are wicked. They say that the railroad would corrupt members of the Legislature. They say that gentlemen who are now present in this room have been hanging around the halls of Legislatures for the past twenty years for the purpose of corrupting members of the Legislature, and they say that they have succeeded in doing it. They say that the railroad companies of this State, particularly the big railroads, maintain people for the express purpose of corrupting members of the Legislature. Grant it all. They say also that they have corrupted the newspapers—that they have even soiled the judicial ermine of this State—not only of this State, but of the United States—and that they have even invaded the precincts of the gubernatorial home and the presidential hall, and corrupted them all. Grant it that they have done so; and if it be true, how long would it take for the

railroad companies to steal all these books and burn them up, and then where would we be?

If the book issued by the Western Classification Committee were destroyed—if every book issued by that committee were burned up (and I tell you it is an easy matter to do so, for no man except a railroad man has possession of those books—no man save a railroad man has them) the railroad companies of this State, and this nation could destroy in twenty-four hours every book issued by the Western Classification Committee.

Have any of you gentlemen ever lived in the State of Nevada? If so, you know there existed there in its early history men who were known as the "inside" prospectors; they would come into Court at any time and swear to any lie about any mine, if reasonably paid for it. They relied upon their memory. So if we are to become a profession of "inside" prospectors, it will be far ahead of those of the Comstock Lode, who, we are told, were willing to swear from memory to the lies of the various mining corporations. Now, if you grant everything that is said against the railroad companies—for if they do what they say they have done in the past, what they say they are trying to do now—why, there is no limit to their wickedness; and these books would be gobbled up so quick that no man would be able to even keep a leaf.

Now, has there been any evidence produced here that would justify you in running such a chance as that? If so, where and when and how? If there is any testimony here of experts; of any common, plain every-day ordinary citizen; if any testimony of any shipper in the land, if any testimony of any man who has been charged extortionately for rates of freight or fare; if any testimony presented here in the reports of any authorized Commissions; where is it? Answer where? It exists simply in the brain of one man. And yet, you are asked to change the Constitution without anything to base the change upon. We say that is not right. We say that is not a mere temporary measure. It is law—it is not a law that can be later amended or repealed. It is a Constitution made to last for all time; not to be changed with the next breath of public opinion. We know that political parties of California are nearly equally divided; we know that the Legislature of one session is Democratic and the next Republican. All this because the people change their politics. We read of a certain party in power one session, and the next changed. But these are mere temporary changes that can be made without injury to the mass of the people. The Constitution is a solemn and sacred instrument; the Constitution is made for all time, and it should not be changed except upon the very best of reasons; and unless the man who votes to change it can say, I gave my vote because of evidence introduced which was overwhelmingly in favor of the change.

Now, again; are these figures set here in this Constitution—these five pages of figures—are those figures as low as they should be? If so, where is the testimony to prove it?

Has any man on this committee heard any testimony to show these figures are as low as they should be? Remember, you are called on to legislate for the people; still, they tell you the people want low rates; are these rates as low as they ought to be; ought they not to be reduced? If so, why? Ought they not to be raised? Has any man introduced testimony to show these rates are as high as they ought to be? I under-

stand not; but I understand, on the other hand, there have been a dozen or twenty men here giving evidence, showing from facts and figures that these rates are not high enough; why, then, should you adopt these figures?

Again, if we admit, for the sake of argument, that these rates are correct for the present time, let us admit for the sake of argument, that if these rates are put into the Constitution, all railroads in the State are compelled to charge these figures, and no more; let us admit to-day it is the proper amount to charge. Will the same conditions always exist in California? If not, then should we take these figures as a basis; will we always have the same number of railroads, too? Will there not be competition? We hope so, we believe so—almost know so; then should these figures be fixed? If so, why?

Who made these figures? A railroad man. Who vouches for them? A railroad man. Where is the sworn testimony that supports them? They are based arbitrarily; they are made without reference to the condition of affairs in this State; they are made by the Western Classification Committee, which is not composed of the railroads of this State as an entirety; the railroads of this State form but a very small portion of that Western Classification Committee, and have very little to say in fixing those rates.

Where is the sworn testimony, then, which proves to you these rates and figures are what they should be? Who vouches for their being correct? There is not any Court in this land that would mulct a man for fifty cents without testimony. Shall this committee strike the millions invested in railroads in this State without some sworn testimony to justify the action? We say it should not be. Now, we say also, that this legislation is absolutely and entirely unnecessary. I shall not take up the time of the committee, as it is growing late, and I know your time is valuable. I shall not take up the time with what we know to be correct. We don't believe there is any public clamor in this State in favor of this particular bill; we think it has been engineered by one person—by one association—and they have built up a fire and flame. What is its real intent? What is its real strength? It amounts to nothing. It is not the feeling of the people, because if it were, it seems to me there would be more complaints presented than there are at present. But this resolution, we say, is entirely and absolutely unnecessary.

The theory of the Railroad Commission is a good one. Its execution, let us admit, is poor in California. Let us admit for the sake of argument that it is poor in California. It would be almost in contempt of Court to say that its execution were not poor in California, because it has been decided it was inefficient in California, and I feel the respect due the Court, therefore we will admit for the sake of argument that its execution is poor in California—admit that the present Commission has not done right.

Admit everything that can be said in regard to it; let us admit it in its strictest and broadest sense. Let us take the pledges made in the Assembly in favor of that resolution as the basis, and see if their word was true, for the sake of argument. What of it? Whose fault is it, the railroads? No, it is the fault of the people; it is the fault of the people who elected the men to office. It is the fault of the law. Let the people elect better men to office. If we are going to change the Constitution at

all, change it so the Commission can have the power to enforce their decrees. I have lived in California for twenty-seven years, and have heard members of Boards of Supervisors denounced as strongly as this Commission has been denounced. I have heard the Legislature denounced; I have heard—I have seen members of the Legislature burned in effigy; having served in both branches, I can say, all this I saw, and part of this I was. But who ever heard of abolishing the whole Legislature simply because some of the members had done wrong? It is claimed that most of this Commission have done wrong, and, therefore, you must change entirely the Constitution, change the execution of it. Where will the control be placed if you abolish this Commission? Where will the control be placed? Part in the Legislature, part in the Constitution; a divided body.

I will submit whether it is a good plan to put the power into the Legislature again. I served in the Legislature when the railroad question was before the Legislature. I served in the Legislature when the railroad question was not before the Legislature. We did not have any friction; we devoted our time to work. I believe in keeping this matter out of the Legislature; it is a good way to handle it. The experience in other States demonstrates that Railroad Commissioners, if they are men who will do their duty, is the best way; the remedy is with the people. If the people elect good men to the Legislature, they are all right; if they elect bad men, they get the worst of it; if they elect bad Justices, they get the worst of it, and the remedy is to get rid of them. If it is sought to change it—if it is sought to change the Constitution in reference to the Railroad Commissioners—give them more power. You say you want to change the Constitution. I say, as one speaking his humble opinion, I say it is not necessary to change the Constitution to do that. I believe the Legislature has power to enforce their decrees; I think you have the power to give this Railroad Commission ample, unlimited power to say to the railroads, these are the rates for freight and fare; we have prepared them for you, and you must obey them; and give that Commission power to enforce their decrees; let the responsibility rest with them; change the Constitution so as to give them the power, if they have not got it now; but in the name of common sense, in the name of this State, in the name of equal rights to all, in the name of that safety which is voiced by the Constitution of this State, let us have no more class distinctions, no more arbitrary distinctions.

Let this railroad question, if it is to be tinkered with at all, be tinkered with by giving the Commission power. The reason they have not done their duty in the past, they say, is because they have had no power to enforce their decrees. Give them the power. Admitting as I do, although I deny it as a matter of fact, the proposition that the Railroad Commission in the past has not done its duty, for the sake of argument, then I say, the reason given by themselves—and it is a good reason—is that they did not have the power to enforce their decrees, and if it is necessary to amend the Constitution in order to make up for the damage done to the State by reason of the failure of the members of the Railroad Commission to do their duty, amend the Constitution so as to give them power to do their duty, and then elect good men as members of the Railroad Commission, and all will be well. Give the little roads a chance. If you are to pass this, leave them out. But do not pass this at all; do not put such an anomaly in the Constitution of

this State. We are all proud of our State; if I may be pardoned in saying a word in favor of the State to members here, some born in the State and others living here for many years; and in the course of travel this year, and we all expect to attend the World's Fair, we all expect to go there and boast of the State of California as all true Californians do—I venture the assertion that even the respected and honored gentleman who represents the county of Napa in the Senate with so much ability, and whom I have known and honored so many years—I venture the assertion, if Senator Gesford, the putative author of this bill, was in Chicago visiting the World's Fair, and this should become a part of the Constitution, and he was asked "Who put this mass of figures in the Constitution?" he would say: "I do not know, really I have forgotten." He would not be proud of his own work, because it would be such an anomaly, this Constitution; and the results are not too far-fetched, for it would ruin every little road that has come up here and given your committee facts and figures to show that it would be dangerous.

The Southern Pacific Company, I speak not for. I have no affiliation with them, except that of friendship to some of the men connected with it. I represent it in no way, shape, form, or manner. I know not its views on this matter, and care not for them. I speak here as the representative of the little roads, as a citizen and taxpayer of California, and say that if such a measure is ever passed (and voicing the sentiments of the gentlemen before me), it would turn back the wheels of progress in this State for twenty years. We are all looking forward to the time when the headlight of the competing railroad shall be seen flashing its rays upon the hills and valleys of this State, carrying the music of the competing railroad into the ear of every shipper of the State, reducing the rate of fares and freights, not by the Constitution or by oppression of law, but by the higher, broader, stronger, grander, and more impressive law of competition; and unless you allow the railroad people to manage their business in a reasonable way, unless you invite capital here, and unless you refrain from putting iron bands upon capital, as this would be, the day is very far distant when a competitive railroad will enter California. If things are left as they are; if the people are permitted to go on in their own way, I venture the prophesy, Mr. Chairman, that at the next session of the Legislature, when you return here to resume your seats, you will be met at the entrance to the depot at Sacramento with the headlight of a competing railroad in this State, and that will solve the question of fares and freights in California.

Gentlemen, I thank you for your attention.

SACRAMENTO, February 1, 1893—8:30 P. M.

MR. EARL: At the adjournment of Constitutional Amendment Committee last evening, we had arrived in order of the programme at the Eel River and Eureka River Railroad. Mr. Dolbere—is he here to present any matters in that regard?

MR. S. M. BUCK

Appeared in behalf of the Eel River and Eureka Railroad Company, and spoke as follows:

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: On behalf of the Eel River and Eureka Railroad, I desire to call your attention to a few facts in regard to the condition of that country, and also of the condition of the road, that you may the better understand how we are situated up there. I have listened to many of the reports in regard to the short roads, and I find that there is a similar condition existing in regard to all of them throughout the State. However, we are somewhat peculiarly situated up there. Of course, Humboldt County is a large county—commences about the 40th parallel of latitude, lying on the shore of the Pacific Ocean, running about 100 miles, and is about fifty miles on an average wide, making a very large territory; and it is peculiarly situated in this, that it is surrounded by a very mountainous, hilly country, and its only outlet for the purpose of transportation, either of passengers or freight, is by way of Humboldt Bay and the Pacific Ocean, and has been for years. Now, under these circumstances, and considering the fact that navigation has been considered rather hazardous across the bar—Humboldt Bar, as it is called—the county has had a very slow development.

It has, we claim, great natural resources. It has boundless forests of very fine timber, and fine grazing land, and really is a country that ought to have invited some railroad to penetrate there long ere this; but it never has. And the business of the county has developed very slowly, yet still steadily. It never has gone back. But the necessities, the absolute necessities of the business of the county, demand the building of railroads. Of course, business men there after they had attained considerable wealth and standing in the community, found that they could not compete in their business with other portions of the State, except that they made use of this modern means of transportation. Now, then, about ten years ago several of the citizens of Eureka, which is the county town of Humboldt County, and contains a population of perhaps eight or ten thousand inhabitants, conceived the idea that they would build a railroad to Eel River Valley, about twenty-five miles long. Now, this railroad would point to Ukiah, where it would naturally connect with the San Francisco and North Pacific Railway. To them, at that time, it seemed to be an enormous undertaking. Of course they were men who had had no experience in railroad building, and they subscribed a sufficient capital stock and paid in sufficient to start the road, and in the course of a couple of years they even completed it, and after having completed it, of course they found that it had cost them about several hundred thousands of dollars to build that road. The most of the capital that built that road was borrowed capital, so that now the financial condition of the road may be tersely stated to be about this: The bonded indebtedness of the road is \$488,000, represented by four hundred and eighty-eight bonds of \$1,000 each, bearing interest at six per cent per annum, payable semi-annually.

Now, when they built this road, of course they had no idea that they were building it for profit. They believed that their money would be lost for many years, and it has proved so; that is to say, the original stock has never paid any dividends, except a small dividend, I think;

this year our dividends started in. It has kept up the repairs of the road, and made such small necessary betterments as had to be made; and it is completed and paid for, and some day the enterprising citizens who built it have hoped to secure from it, that is, from their original investment, and for the time and energy expended in its construction, some recompense. However, the people along the route that reaches Eel River Valley have reaped an enormous benefit. Of course they risked nothing; they gave nothing to the road. Here was a road built to their doors by the enterprising citizens, and they found that they could send their property to market—they could go themselves to Eureka for one half what they had been accustomed to expend for that same purpose. They found that the value of their property had nearly doubled by reason of the building of this road, and they realized that they had been benefited in a great many ways. Besides, it created a great deal of business that otherwise would not have been done.

Now, much of the freight over this road is lumber, and of course while the earnings of the road have been considerable, considering its length and its cost, the earnings have principally consisted of the transportation of lumber, which has been transported under special contract, and not upon any regular rates. Of course, they have a schedule of rates for ordinary freight, such as produce, grain, potatoes, and freight of that description, but all of the lumber that comes from these large mills is carried upon contract. And they now have, as I learn, contracts with the two principal mills that they carry lumber for, to carry for so much a thousand under these contracts, which extend over a number of years.

Now, this railroad is earning—but I will first call your attention to the rates. The rate for lumber is from \$1 per thousand up to \$2, according to the difficulty of getting it. The rate for passengers is 5 cents a mile. The other freight rates I do not know, the schedule rates, but they are about in the same proportion to these. The road is doing very well; that is, it is doing a large amount of business. It is well built, well stocked with rolling stock, sufficient to accommodate all the traffic offered. Now, the gross receipts per mile per annum is about \$5,000. Of course that would bring it within the prohibition of the \$4,000 restriction, as I understand it, of this constitutional amendment.

Now, coming back, may it please the committee, to our overland connection; that is what we need, and what the people of the county have been longing for for years—connection with the railroad system of the State and the United States. The distance or gap between the end of the road already built (because there is a small extension forming a junction with the Eel River road, up Eel River) is about one hundred and fifty miles. To build that we will say in round numbers will cost about four million dollars.

In order to build that, of course it will be necessary to furnish bonds to the extent of about three million dollars. Now this is a great necessity for our people. They all feel it. None of them complain of the charges upon this Eel River road—and I shall call your attention in a few moments to other roads of the county. They are all happy and pleased; they have been greatly benefited by it, and of course with a short road built by their own neighbors and friends there is no need to have any difficulty, because if any difference of opinion arises, they can

easily consult with each other. But this connection with the railroad system of the State has been longed for for years by these people; and, as I said before, it has become a burning necessity. They feel they must have it. Now then, they naturally feel very timid; they feel very anxious over this constitutional amendment introduced in the Legislature, and they say to themselves, if such a thing as that passes, how would it be possible for us to furnish bonds? It must necessarily destroy the confidence in railroad securities, especially in the building of new roads. In other words, it would arrest the development of that county for years; that is, we feel it would; we fear that it would, and we may say that we are positive that anything of this kind would do us an immense amount of harm, in fact utterly ruin us.

Now then, may it please the committee, take a general view of it. In Humboldt County we have about one hundred miles of standard gauge railroads—a little over—consisting of short roads, leading from the main bay, Humboldt Bay, out into the main valleys. More roads must be built.

Any legislation tending to cripple railroads built would injure the people there vastly. Now, it has become, may it please the committee, in these days, an absolute necessity to have railroads; in other words, our civilization depends upon railroads. The railroad, the telegraph, the telephone, and electric lights, have all come to stay. There is no such thing as going backward—we must constantly go ahead. The whole ambition, the whole feeling of the people, is to advance, to go forward; and any person, or any set of persons, who attempts to stem this tide of prosperity, must necessarily be buried. They cannot meet the masses that are pushing forward, and if they undertake to stem that tide, they are bound to be trampled under foot. Now, you take this very proposition. It is a move in retrogression of the progress of the people—it is an attempt to put a block under the wheels of progress. But it cannot possibly be. Now, I feel, may it please your committee, somewhat diffident in addressing you. I have heard several addresses here, and this ground has been gone over so thoroughly, that it seems to me, if I undertake to elaborate on it, I will only touch on the old ground over again, and it must become somewhat stale to you, to have this thing hammered and dinned into your ears. To give you some idea of our necessities for a connection with the railroad system of the State, I will say that we have about thirty thousand inhabitants in that county, and they are entirely isolated from the world, except over this ocean route; and for myself, I have traveled over this, back and forth, so often, that I feel like a regular old shell-back sailor.

There is the Eel River road, 25 miles; the Pacific Lumber Company road, about 15 miles; the Arcata and Mad River road, about 15 miles; the Fresh Water railroad, about 15 miles; Vance's railroad, about 15 miles; Macabe & Co., about 10 miles, and other short lines aggregating about 140 miles of railroad in that county. They are all short roads, but they have cost a great deal of money, and there has been no money made on them except in this way: many of them have been built by business men, who found that they were a necessity in order to do business. That is to say, regarding lumber manufacturers—they had to have their logs—they found it necessary to run these railroads into the forests, and penetrate into the different valleys, rivers, and creeks in order to draw the logs to their mills; in other words, they became a necessity to the doing of business in the county.

Of course, there are many objections to this proposed constitutional amendment. Not only will it destroy and retard the progress of railroad building, which seems to me is a great necessity, not only to our people there, but to the whole State; but so far as we are concerned, I believe that we really need it more than any other portion of the State; and we think that this bill, if it could possibly become a law, would injure us more than any other portion of the State in proportion, because there is hardly any part of the State but that has some railroad connection; that is to say, they don't have the same distance and the same obstacles to overcome in order to reach a railroad connection with the system of the country.

Of course, I can't conceive, may it please the committee, that one hundred and twenty intelligent gentlemen, such as compose this Legislature, can be assembled from different portions of the State, who could seriously consider this proposed constitutional amendment. I don't believe it, and never shall. I presume that all the time and trouble that we have been to in coming here, have made no difference as to the final result of the vote upon this amendment; but, after all, since the agitation has been commenced, I hope, and I believe, and pray that good may come of it. The different roads, represented by different gentlemen, have come up here and have given you facts and figures, and made you acquainted with the reasons why agitation of this kind should cease, so that you can not only present it to your fellow members, so that they can all intelligently act upon it, but your proceedings being public, and being published and spread broadcast over the land, everybody derives information in regard to it. In other words, it is an educator of the people. The people ought to be educated on this subject, and they ought to understand that all persons who agitate a fight against the railroads are not their friends—in other words, they are not doing that which is advancing the interests of the people of this State. No man who fights the great improvements of the age is doing his fellow men good. Every man who wants to benefit the people of this State, or any other State, or any other country in which he lives, must advocate and must throw his influence in the direction of progress. He must not resist the great improvements, the great educators, the building up of the country. The rail-civilizers—they bring the people together; they make us all neighbors; they bring the people of the East right in close neighborhood with the people of the West. They are the peace-makers of the world. They make neighbors of men separated thousands of miles in distance, who without these railroads would be strangers; would be jealous of each other; would hate each other; they bring the people together, and they make a brotherhood; they make a nation of brotherhood.

Now, suppose this should pass—and I don't wish to go over the ground of the gentleman who addressed you last evening, Mr. Johnson. I had some ideas which he expressed much more aptly than I could, and much more forcibly, but I would like to make one or two suggestions. Now, suppose if this were possible to pass, what would be the result in a legal aspect? I quote from the case of the Chicago, Milwaukee, and St. Paul Railway Company against the ———, 134 U. S. 459, a brief synopsis, or rather a brief extract from the decision of Mr. Justice Miller, who speaks of legislation of this character, and he says this—it is only a few lines:

"And neither the Legislature, nor any Commission acting under the authority of the Legislature, can establish arbitrarily, and without regard to justice and right, a tariff of rates for such transportation, which is so unreasonable as to practically destroy the value of property of persons engaged in the carrying of business on the one hand, nor so exorbitant and extortionate as not to have regard for the rights of the public for the use of such transportation on the other."

In other words, then, suppose this were to pass. It is an entirely arbitrary measure, and it must necessarily be. This Legislature can not try and fix tariffs for any particular road. If it should undertake to do anything of the kind, it must make an arbitrary rule, an arbitrary regulation, and if this must be done, what would be the result to all these little roads—they would be virtually confiscated under this proposed amendment. Of course, if the doctrine enunciated by the learned Supreme Court decision of the United States be correct, why, these lines must resist; in other words, the consequence would be that it would open up a Pandora's box of litigation. Now the vast extent to which these roads would be thrown into litigation of course wouldn't benefit the people. It would be, may it please the committee, like all titles to land that are entirely unsettled. We all recollect the effect of the old Spanish grants in this State, and until these titles became settled, and until the people could feel that their title was good, that they were the owners of the soil upon which they settled, they couldn't make permanent improvements. No man will do it. He hasn't confidence to do anything of the kind, nor will people build railroads if you check the confidence in their ability to control the property after they get it. Now these are considerations that all ought to be looked to. They ought to have their weight.

But, may it please the committee, without going over, and without going into detail in this matter, I take it that this is the understanding of the committee, that no Legislature has the power—they may have the legal power, but they have not the power to do impossible things, and I undertake to say if this thing pass it would simply be an impossible thing, and what I mean by that is that it would be an impossible thing to enforce it. No Legislature, nor any set of officers ever could enforce it. It would simply stir up strife; it would simply raise commotion; it would simply throw open a Pandora's box of litigation all over the land; progress would cease for a season, but mark you, gentlemen of the committee, progress will never cease for any great length of time; all those who throw themselves in the way of the wheels of progress will be crushed sooner or later; they cannot stop it; you nor I nor any one else can control this question. It is to be for advancement; it is going ahead; no Jack Cade can control it, and there are many of them in the land who say to the people, if you will give me the power, I will do this and I will do that, but no more than the Jack Cade of old can you, by legislation, do this thing at all. Of course, true, the only way that you can do this is by a Court something like the Commission; may be that the Commission has been a failure so far; I think myself to a great extent it has; in other words, my idea of a Railroad Commissioner would be a most intelligent man, and one who was willing to devote his whole time and attention to the great object of investigating the condition of the different railroads of the State—investigating their relations to the people, investigating their rates of freights and

fares, and if they found any injustice and they did not have the power to correct it, report it to the Legislature and obtain the power.

Now, we have never had a Railroad Commission that has done that thing, although I believe that the Railroad Commission has been a very great benefit to the State; the very little that they have done has benefited the people, and all the time this thing is being discussed, all the time this Railroad Commission is being arraigned before the people because they did not devote their time and attention to the duties which are imposed on them by the Constitution. I say that the Commission itself and the people are being educated up to it, and the Commission will become what it was meant to be and what it ought to be. There is no other way. It is impossible for the Legislature to deal with this thing; it is impossible, I say, because I believe you are all intelligent, honorable gentlemen. I say it is impossible for them to pass this thing; it is impossible for them to seriously consider it, in my judgment. I understand from some of the members of the other branch of the Legislature that there has been a report something like this: that it has been reported back without recommendation; but I am satisfied, from conversation I have had with different members of that branch of the Legislature, that many men who came here prejudiced in favor of some measure of that kind, upon consideration, when their thoughts had been directed to it, they have entirely changed their impression as to the feasibility of anything of this kind, and necessarily they must.

Now, I don't feel like elaborating upon this thing, because I feel, as I said before, I should simply be going over the ground that has been so ably gone over by others, and I think I have given you something like a general idea, and I hold in my hand here a type-written report in regard to the road, which I will file with your committee, which gives a little more succinct statement and perhaps a little more in detail than what I have given you; but I think I have given you a general idea of our situation up there; of our needs and necessities, and we hope, and believe, in fact I have no doubt in my own mind as to the result of your investigation of this matter that you will recommend that it is impracticable and tell your fellow Senators so; and I know that your report, which you can easily make up from all these reports which have been handed in to you, when it goes forth to the people, I am satisfied, will convince the people that they have been ably and well represented, and on further consideration that your report and your action is correct. Of course I can understand this, that there is always some question between the railroads and the people; there necessarily must be; the railroads are managed by people who desire to make money; it is very natural, and sometimes, perhaps through thoughtlessness, perhaps through inadvertence or ignorantly, they do that which may wrong somebody, and the person who is wronged becomes antagonistic to the railroad at once. True, it may be that wrongs have been committed, but there is no business in the world, may it please the committee, that has been conducted where there is not more or less friction and more or less wrong committed, and we cannot expect railroads shall be an exception. We cannot expect that they shall always be controlled by men of intuition or men of godlike qualities; so that they may always do exactly the right thing at the right time; and these things, it seems to me, ought to be disseminated among the people at large, and I know

of no place where matters of that kind can be presented and spread throughout the land better than from this Senate.

Now, gentlemen, I will not detain you longer, so far as I am concerned, and I thank you.

BURKE: When was your road completed?

BUCK: In 1885.

BURKE: What is the amount of the bonded indebtedness at the completion of the road?

BUCK: Something like over \$500,000. They have paid off some portion of it.

BURKE: How much are you paying off per annum?

BUCK: There is no special amount to be paid off; the bonds have some fourteen or fifteen years to run, and they can only be paid off to such as are willing to take their pay.

BURKE: Do you make any provision from your gross earnings to meet your indebtedness?

BUCK: This is the first year that the law required a sinking fund to be commenced. The bonds had so many years to run, and after that they are required to commence a sinking fund for their redemption at their maturity.

BURKE: Your gross receipts, as I understand you, amount to about \$125,000 per annum; do you know what your expenses are, independent of the interest on your bonds?

BUCK: I could not tell you that; I did not have the data to make it up, and Mr. Dolbere, who is the only Director, is here. We are trying to make this up as well as we can. We had to do it somewhat hurriedly. I can't answer that exactly.

STATEMENT OF MR. JOHN DOLBERE.

(Representing the Eel River and Eureka Railroad.)

To the Chairman and Committee on Constitutional Amendments:

GENTLEMEN: In 1882, a few prominent business men of Eureka united to build a railroad connecting that city with the Eel River Valley. The people living on the proposed route were anxiously waiting for better facilities of travel and transportation. Under those circumstances, the Eel River and Eureka Railroad was pushed to completion by its projectors at a cost of \$700,000. It was completed and in running order some time in 1885. Since then the rates paid by passengers and shippers for transportation has been thereby reduced at least 50 per cent, besides the great advantage of speed and safety. It is about twenty-five miles long, and is a standard gauge railroad, fully equipped with rolling stock sufficient to handle all traffic offered.

The funds for constructing this railroad were mostly borrowed, and the present bonded indebtedness of the railroad is \$488,000, represented by four hundred and eighty-eight bonds of \$1,000 each, bearing interest at the rate of 6 per cent per annum, payable semi-annually.

The building of the Eel River and Eureka Railroad was not undertaken by its projectors with the expectation of making money; they hoped for some remuneration for their time and money expended, but

their principal inducement in building the railroad was to improve the city of Eureka, and accommodate the inhabitants of the rich Eel River Valley, and also to commence a railroad pointing in the direction of Ukiah, in Mendocino County, where it would connect with the San Francisco and North Pacific Railroad, and thus afford Humboldt County railroad facilities which would unite it with the railroad system of the State and United States, and with the city of San Francisco.

This railroad now extends from Eureka a distance of twenty-five miles on the direct line towards Ukiah. The Pacific Lumber Company have built an extension of about fifteen miles further up the main Eel River. This leaves a hiatus of about one hundred and fifty miles to be built in order to make railroad connection with the San Francisco and North Pacific Railroad at Ukiah. To build and equip this extension will require, in round numbers, say \$4,000,000. From what I have already said, it must be apparent that this extension of the Eel River and Eureka Railroad to Ukiah is a burning necessity to the people of Humboldt County. In addition to this, local extensions and branches must be built in order to properly accommodate the growing business of the county and develop its vast resources. To build these necessary railroads it is absolutely necessary to borrow large sums of money, and this upon bonds secured by mortgages upon the roads to be built. The people interested are fully informed upon this most important, and to them vital subject. They feel, and we all feel, that any legislation tending to cripple the short local roads now in operation in that county, must of necessity have a tendency to impair railroad securities, and render it very difficult, and perhaps impossible, to borrow money on them. The resolution now pending before the Legislature to amend the Constitution of this State, and incorporate therein a fixed schedule of rates and fares and freights applicable to all railroads in the State, if passed and adopted, must necessarily cripple all short roads in the State. It would virtually shut the county of Humboldt in from the outside world for many years to come, and this, upon the very eve of a prospective railroad outlet.

It will therefore be readily seen that the proposed measure would not only virtually put a stop to the investment of private capital in building railroads in this State, but it would cripple the energies of the people and discourage thousands of business enterprises dependent in whole or in part upon railroad facilities.

The passenger fare on the Eel River and Eureka Railroad is 5 cents per mile. Rates for freight are in about the same proportion. The patrons of the railroad have never complained of this, as they appreciate the great advantages which have accrued to them from the building of this railroad. While they have not invested nor risked a dollar in aiding the enterprise, they have seen other men, citizens of the same county, jeopardize their money and devote their energy to building a railroad to their farms, bringing to their very doors a market for everything they can produce, and doubling in value everything they possess.

As the gross earnings of this road amount to about \$5,000 per mile per annum, it would fall within the class of railroads to which the schedule of rates in the proposed constitutional amendment would apply. The most of this freight is, however, on lumber and shingles, which are handled over this road at a very low rate, increasing the vol-

ume in a greater proportion than the profits of the road. If allowed to run on its present schedule, it would, from this time forward, pay the projectors of the enterprise some interest on the money originally invested by them. For the first nine years, the road did not pay the investors a single dividend for their time, energy, and the risk required in undertaking and carrying through the enterprise. Any legislation that would at this time deprive them of all chance of any profits that might otherwise accrue, and possibly oblige them to go deeper into their pockets for the means of paying the interest upon the bonded indebtedness of their railroad, would be exceedingly unjust and oppressive. The stockholders of this railroad believe that they have vested rights in this property, and also in the use thereof, that are just as sacred as if their money had been invested in any private manufacturing enterprise.

But over and above private rights of property, and what is of paramount importance to the great northwest of California, is the blighting effect such a measure would have upon every projected railroad. The days of munificent subsidies are among the things of the past. Private enterprise alone can now be depended upon to construct new railroads, and open up and develop the vast resources and riches of large portions of the State that are now lying untouched; but legislation of the kind now contemplated, would strike a deathblow to all railroad extension, by killing the railroads that have been built wholly by private enterprise, and by bringing financial ruin upon those enterprising and public-spirited citizens who have come to the front and risked their money and credit in building and constructing railroads, thereby enhancing the industries of different portions of this great State.

Respectfully submitted.

MR. WILLIAM COLLIER.

(Representing the Los Angeles Terminal Railway Co., and also the Southern California Railway Co.)

MR. CHAIRMAN: While I have no statistics in regard to the Los Angeles Terminal Company, I can only say for them that they operate something over forty miles of road in Los Angeles County, and they desire to be understood as objecting, in connection with other companies, to this proposed legislation; and while I have before in a former meeting made some suggestions to your honorable committee in regard to the results of this legislation in former States, since that time I have been able to procure some figures in regard to the results, which I think are practical, and which I think ought to be taken into account by this company. I have pursued my investigation somewhat further than the State of Iowa that I mentioned formerly, and I find that in the State of Wisconsin, in 1874, a statute was enacted fixing a maximum of rates of fares and freights. I find also in Minnesota in 1871 a statute was enacted in like manner, and also in Iowa in 1874. If there be others than these, I have failed to discover them. I have traced this legislation through the sessions and laws of these several States, with the result which I will give, and will take them in order.

I have prepared, with the aid of the assistant in the State Library, a schedule of the railroad construction in those States prior to and during the existence of those statutes, as follows:

This, as I believe is throwing the clearest light upon the result of such legislation as is proposed by this amendment:

In the State of Minnesota there were built in 1869 two hundred and sixty-eight miles of road. In 1870, two hundred and seventy-seven miles. In 1871, five hundred and forty miles. During this year a law was passed fixing maximum rates of freights and fares in that State—Chapter XXIV, Laws of 1871—a law covering, or attempting to cover, practically the same ground as that proposed by this amendment. In 1872 there were built two hundred and ninety-four miles of road in that State. In 1873, forty-four miles. In 1874, forty miles. They got weary then and repealed the law, but they left, however, some very stringent features of the statute. In 1875 there was not a single mile of railroad built in that State. That year they wiped out the thing almost entirely, and passed a more favorable and liberal law toward railroad companies. In 1876 there were thirty miles built, in 1877 one hundred and seventy-four miles, and in 1878 three hundred and forty-one miles.

In the State of Wisconsin in 1873 there were four hundred and eighty-two miles of road built. In 1874, one hundred and eighty-six miles. The agitation was pending then, and during that year the Potter law was passed in that State, fixing the maximum of fares and freights. In 1875, the next year, there were twenty miles built. In 1876, seventy miles. That year they repealed the Potter law. In 1877, sixty-five miles—takes a little while to get over the disease, you will observe—and in 1878 one hundred and nine miles.

In the State of Iowa, in 1871, there were built four hundred and seventy-seven miles of road. In 1872, four hundred and eighty-six miles. In 1873, eighty-two miles. Now you will observe, gentlemen, that the conventions of the anti-monopoly element were being held during the year 1873. The grangers were organizing throughout the State. The agitation was fermenting. The conventions were held during the summer time—August or July. The election was held in November. The Legislature met early in December, or late in December, and the law was passed in March of 1874, so that pending the decision of the people upon this question there was a falling off from four hundred and eighty-six miles in 1872 to eighty-two miles in 1873. In 1874, in March, the result of this agitation in the Legislature took place, and what was known as the Granger law was passed. That year, 1874, there were thirty-seven miles of road built in the State of Iowa. In 1875 there were eighty-five miles. In 1876 there were eighty-nine miles. In 1877 there were ninety-five miles. In 1878, in March, the law was repealed, and there were in the year one hundred and thirty-two miles built in the State, and in 1879 there were five hundred and thirteen miles built.

It seems to me, gentlemen, that these figures, taken from Poor's Manual, which I take it is authority, speak very loudly to us in this particular matter. It seems to me that comment is almost unnecessary—and yet there are one or two matters I desire to mention.

I don't believe agitation ever came at a more inopportune time than at this. We have not reached the point in the State of California when

we can afford to discourage investments in railroad enterprises in this State. We are all hoping for great things as a result of the magnificent appropriation made by this State to make the California exhibit at Chicago during this year a success. We expect to have our State there magnificently represented, and to attract great attention—hoping to receive great results from that exhibit, in the increase of our population, and in capital to invest itself within our border. It seems to me it would be a very dangerous move, in the light of what we desire, and what we expect as a result of that national exhibit, for representatives of the State of California to appear there in Chicago with a law or a constitutional amendment such as is proposed here in one hand, and point to that exhibit with the other; it seems to me that if it were possible at all, that one would entirely neutralize the other.

In regard to the Southern California lines and their purposes, I have no knowledge. What their profits may be I am unable to state. I know this, however, that for the past six or seven years they have been continuously expending money south of the Tehachapis, until they have more than five hundred miles of road in that section. What the purposes of the Santa Fe system are, I don't know; whether they propose to extend these lines from Mojave north, I am unable to say. But I do say this, that if it be their desire—if it be within their ability to do this—to reach the bay of San Francisco, I can say, for I believe it to be true, that it cannot be done. The funds cannot be procured to carry forward this enterprise if such legislation as this is placed in our Constitution. It makes no difference to me whether it was in the Constitution or in the State statutes, it would have a like effect. I do not know—it is not for us to say—the matter is entirely in the discretion of you gentlemen and your associates, what is required and what is needed in this State; but I do believe, in the light of this showing, in the face of the figures that I have read to you, and the experience of other States, we ought to be wiser than they. We ought not to allow ourselves to fall into the same error, and cripple the progress of our State by the same means that it has been done in other States, who have repented and learned a lesson after some four or five years.

These remarks, gentlemen, are all I desire to make, and I thank you very kindly for your attention.

WEDNESDAY EVENING, February 1, 1893.

EARL: Mr. Fulton, do you wish to add anything to what you have said?

MR. FULTON: I don't like to use the committee's time. I presume you are tired of the question; but I have waited here since last Friday evening, supposing that Mr. Leeds would be in Sacramento. Our interest is such, and he seems to be the gentleman who has had the honorable Senator to introduce this bill; he seems to be our only accuser; he seems to have deluded the merchants of San Francisco into the belief that they are abused and robbed by all the railroads in the State, or, at any rate, a bill has been introduced taking in all the railroads. Mr. Leeds, I see, and I presume we may believe, says to-day in the "Bulletin" that if there isn't special legislation in regard to the smaller roads that they will be taking the property away from them without any due

process of law; that it is necessary to discriminate in regard to the railroads of California. He says plainly to a reporter of the "Bulletin" that it is necessary to discriminate between the Southern Pacific Company and the other railways of California, or take the property away from them without due process of law.

Mr. Leeds made assertions here in regard to the ties of the road. He made assertions in regard to the fuel consumed by the roads. He made comparisons of the operating expenses of California roads, comparing them with Eastern roads, that are absolutely false, either through ignorance or misapprehension. I am willing at any time to come before this committee, in the interest of our people, and by further testimony prove the assertions I have made, or meet Mr. Leeds before this committee; but if Mr. Leeds' assertions are to be taken for one bit of strength before this committee, I claim the right for people that don't owe one dollar—that have brought their money into this State for its development, and to add to the taxable property of this State—I claim I have the right to have an opportunity to question Mr. Leeds, and let him prove his assertions that he has made, or to permit me to say and to prove to this committee that he has falsely asserted things in regard to ties, fence posts, fuel, and many matters that are of great importance.

After he made his assertions in regard to the operating expenses of railroads, and your committee adjourned to Tuesday evening, I went home, and had a table made of some of the purchases that it had been necessary to make in the operation of our railroad. In the past month or six weeks we have bought rails in the State of Illinois. When we bought them they were \$32 a ton, when they reached us they were \$52 a ton; an increase of 60 per cent over Illinois, Iowa, or Kansas. We have bought a little material in Kansas and had it loaded, and when it arrived to us for the Nevada-California-Oregon Railway, the increase over and above the expense for the Eastern lines was 53 per cent.

Wheels and axles in carloads, at Chicago, f. o. b. cars, when they come to us have an increased cost over and above the Chicago price, or for the Eastern roads, of 86 per cent. This is spot cash. There is no thirty days; there is nothing. It is spot cash. Take iron. Iron in carloads for building trucks for our cars comes to us with an advance of 52 per cent. Brake-beams I have bought in Detroit, Michigan—carloads—come to us with an increase of 33 per cent. Car seats from the Kilburn Car Seat Manufacturing Company, in the city of Philadelphia, come to us with an increase of 25 per cent. Waste in St. Louis or Boston comes to us with an increase of 41 per cent. The articles enumerated show a cost over and above what would naturally be the cost to the Eastern roads, an average cost of 52 per cent over the average cost of these articles to the Eastern roads.

I have nothing further to say to the committee, unless it be an opportunity presents, before I go home, to meet Mr. Leeds.

SOUTHERN PACIFIC COMPANY.

(Statement of J. C. Martin, Attorney.)

EARL: Mr. Martin.

MR. MARTIN: It is not the desire of the Southern Pacific Company to be heard before this committee by its counsel; it is the purpose of that company to present to the committee a truthful statement of the present condition of affairs; to present to this committee the facts concerning their operations and earnings, and take the judgment of the committee as to whether this bill or this resolution should pass or not.

The hour is late, and as the parties will necessarily be occupied some time in the presentation of the case of the Southern Pacific Company, I will, with your permission, endeavor, for the better understanding of the witnesses who will be produced, to give an outline at this time of what the Southern Pacific Company intends to show. And yet, before that, if I can be of some service to this committee in pointing out what I conceive to be grave defects in this bill, both in its principle and its wording, I shall be satisfied; and with your permission will endeavor to do so. The first point—in the first place I desire to say that any criticism that has been made or may be made on this bill or the principle involved in it, is not applicable, according to our understanding, to the honorable Senator from Napa, who stands sponsor for it in the Senate. The bill was not drawn by him, but has been drawn by others, and he has presented it, possibly without thought or time to investigate the matter in the way he himself would desire before becoming entirely responsible for a measure of this character. It is of the first and highest importance that every law which affects a great number of people, and great interests, should be so carefully and plainly drawn that it may, in the first place, express the intent of the Legislature; and may, in the second place, be readily interpreted and understood by those to whom it is intended to apply. This bill does not do so. That it has not received the attention that a measure of this importance should receive, has been demonstrated by the numerous amendments that have been suggested and proposed in the short time that this measure has been before the committee. This is a bill of the Traffic Association of San Francisco, drawn, I presume, by their manager, attorney, or by their legislative committee.

The Traffic Association is an organization of merchants and gentlemen of San Francisco, as we understand it, whose names are not given to the public, but who believe that the profits of their business are too small and should be increased, and that the profits of the railroads are too great and should be diminished. I presume that is the principle on which they are organized. As you know, they have an executive committee, whose names are given to the public—honorable and respected merchants of San Francisco—and they have a legislative committee, whose duty it is, I suppose, to draw laws, and that committee has arbitrarily drawn up this law.

When the matter of legislation was first presented to the public by the Traffic Association, and I speak now of a matter which is common knowledge to all of you, the plans and purposes of legislation were disclosed in what was called the "Traffic Association's pledge," which was sent out to all candidates to the Legislature of all parties, with a hint

of support in case that pledge should be signed, and with a suggestion of opposition to any one who should refuse to sign it in writing.

That pledge, Mr. Chairman, as you know—for I presume you received a copy of it—called for a legislative proposition entirely different from this one. There is no similarity between the legislation proposed in that pledge and the legislation as represented in this resolution first before this committee; and so strong was the demand made by the Traffic Association of the gentlemen who were candidates for the Legislature, that—if I recollect right, and if I am wrong you will correct me, Mr. Chairman—the signers pledged themselves not to adjourn until the particular plan outlined in the pledge should be, I believe, successfully accomplished; or at all events, they should not vote to adjourn until something was done in the premises. The legislation outlined at the time when the resolution to amend the Constitution was first presented here, was entirely different from that outlined in the pledge, and while that resolution has been before this committee it has been subjected to at least two changes by the proponents of the measure.

We have a committee substitute for the original bill, so-called, and we have pencil memoranda and amendments to the committee substitute; at least one such amendment, possibly more. I remember but one. This committee substitute changes the plan of the original bill in this: An attempt was made to divide the roads into two classes: those whose gross earnings exceeded \$4,000 per mile and those whose gross earnings were \$4,000 per mile or less. Those whose gross earnings exceeded the sum of \$4,000 per mile were to be subjected, or to be by this bill, subjected to, by legislative action, certain maximum rates on both fares and freights; and those whose gross earnings are \$4,000 or less, were not to be subjected to that constitutional limitation.

Now, a Constitution is, as was stated last night by Mr. Johnson in his very able and interesting address, a declaration of principles, a rule of conduct, binding on the people, and, of course, on the Legislature of the State, and is supposed to last for all time. It is difficult to amend. It may be amended, but it is supposed to be so skillfully and perfectly drawn that it will meet all conditions that now exist, and all conditions that can reasonably be anticipated. Now, the committee substitute, as it was first read, and under the \$4,000 proposition—and I believe it was line 17, page 2—I think the amendment suggested by Senator Gesford was this: After the word "mile" insert "as shown by the Thirteenth Annual Report of the Railroad Commissioners of the State of California." Now, Mr. Chairman, I suggest to you that that proposition is not in proper form, either for a statute that makes laws for two years, or a Constitution that makes laws for many years. As amended, it will then read as follows:

"Until the Legislature shall prescribe rates, as aforesaid, or in the event that any such prescribed rates shall, from any cause, become inoperative, the rates of charges for the transportation of passengers on all railroads in this State, whose annual earnings are more than \$4,000 per mile, as shown by the Thirteenth Annual Report of the Railroad Commissioners, shall not exceed three cents per mile."

It is in evidence before you that there are a number of roads whose gross earnings now approximate closely to \$4,000; but as in the Thirteenth Annual Report of the Railroad Commissioners their earnings are not equal to \$4,000, if this constitutional amendment or provision

should be adopted as now amended and as it stands; if those roads—and they all have great hopes—should within two years be earning \$10,000 per mile, they don't come under the provision of the section, because in the Thirteenth Annual Report their earnings are shown to be less than \$4,000 per mile. And yet, if by misfortune, a railroad that is earning more than \$4,000 per mile, and it has been so shown in the Thirteenth Annual Report, should have its earnings reduced to \$1,000 per mile, it would still be subject to this constitutional limitation, because in the Thirteenth Annual Report the earnings were shown to be \$4,000 per mile. Is that right? Is it the understanding that that shall be the gauge for all time; that measure as shown by the Thirteenth Annual Report of the Railroad Commissioners; that those figures shall be at all times the measure of whether or not a railroad shall be subject to constitutional limitations? If there can be any reasonable answer given to this objection, Mr. Chairman, from any gentleman, I would like to hear it now.

GESFORD: You will recollect I said in presenting that bill that the schedule of rates of fares and freights was only for a temporary purpose, only until the Legislature could fix the rates; they could not fix them in a year, and they were for that purpose, at the outset; that was the idea.

MR. MARTIN: But that does not relieve the bill from the difficulty. Remember, you are making a constitutional provision in which you declare that certain roads shall have fixed limitations; you have a maximum limit for what kind of roads? For roads whose gross receipts, according to the Thirteenth Annual Report of the Railroad Commissioners, are shown to be \$4,000 per mile and over. What will you do with a road which earns \$3,900 per mile, and in two years from now it amounts to \$10,000 per mile gross earnings? What will you do with it? Is it subject to the constitutional limitation or not? How can it be? Will the Thirteenth Annual Report of the Railroad Commissioners of the State of California show \$10,000, or will it show less than \$4,000?

GESFORD: Well, can you fix on a basis? You can't do it until you refer to some particular basis, can you?

MR. MARTIN: Of course I am not fixing the bill; I am trying to point out what I conceive to be defects in what has been proposed. If these defects exist, and if I or you cannot make a better schedule than that, we should abandon the principle, because it is unreasonable to fix it so, and take some other method of fixing the limit on the roads, and when they come under the maximum of the Constitution. It is not fixed now. The absurdity is apparent upon the face of the bill, that for all time roads may come and roads may go, but this constitutional provision goes on forever, and the question is, when the railroads are exceeding the limit of three cents per mile, and exceeding the California Distance Tariff, and are called upon to answer for it, the question is, what did the Thirteenth Annual Report of the Railroad Commissioners show your gross earnings to be? If that report shows your gross earnings to be \$4,000 or less, they are forever exempt under the Constitution as changed. Remember, this is a constitutional provision, not fixed for eighteen months or for two years, but fixed until the people shall change it. I am sure the committee appreciates, without further dwelling on this point, the point I present—the objection I present to this amendment. And it is no answer to this objection to ask, what would you suggest in

the place of it? Nor would it be an answer to it if I said I can suggest nothing. It would be an argument against a principle that has been adopted that leads to such absurd and unfortunate results.

But, again, what would you do with a competing road, the road that is to be built (and the only popular road on earth is the road that is to be built); what will you do with the railroad that is coming after awhile, that everybody is in love with and in favor of; what will you do with it? It comes in, and, receiving the favor of the united people, in their business, of this State, it gets all the traffic, and its rates exceed the constitutional limit everywhere, and you try and regulate them, and say: "Here, you are charging too much. You ought to be bound by the Constitution; you ought to be limited by this constitutional provision of three cents per mile and the California Distance Tariff." And they say: "Oh, no; that only applies to roads which, according to the Thirteenth Annual Report of the Railroad Commissioners, were earning \$4,000 per mile, and that report does not cover us."

Under this constitutional provision, and by every fair construction of it, only those roads are regulated by it whose gross earnings appear in the Thirteenth Annual Report of the Railroad Commissioners of this State, and there is not any other conclusion to be drawn from it.

But if the maximum were different; if the Senator or myself were able to fix some better plan to escape this difficulty, what would be the result?

Take Colonel Kidder's road (the Grass Valley road, I think it is called), that has a gross earning now per mile of \$3,900, and they have hopes next year to come within the limit. They are ambitious to get out of the class of roads that are called the "little roads" before this committee.

Suppose this were amended now, so as not to limit this report of the Railroad Commission, but to make it general for roads whose earnings may hereafter equal four thousand dollars, or exceed it; make it that way and the Grass Valley road climbs up until it reaches four thousand dollars and more. What does the Constitution do then? It is all right until it reaches that point, when the Constitution comes in and cuts its rates in two, diminishing its revenue fifty per cent; down goes Colonel Kidder's road from under the constitutional provision, and it climbs up again, because they are ambitious; they fix their rates until the Constitution drives them back; they can fix their rates, and when they do that, they climb up again and they get within the constitutional provision, but just as soon as its head is poked in that limit, the Constitution strikes it again with this load, and down it goes again from under the constitutional provision. Isn't that a fair construction of the operation of that provision? If there is any answer to that, I would like to receive it now.

GESFORD: Mr. Martin, I didn't suppose you were talking to me; I don't want to go into critical argument on that proposition; I propose to make a little argument at the close, and I will then try and reply to them if I can. If I cannot I will try to propose something in place of it.

MR. MARTIN: Well, we would like to be heard, because this is an important matter, and we present these points so that while we are here we would like to have them answered, because if you trust to Mr. Leeds and the Traffic Association's Legislative Committee, judging the

future by the past, where you have fallen into one error you will fall into another. Of course we are at a disadvantage, we cannot be here always; we cannot stay here always, cannot be here to hear the answer to these questions, and I am sorry that the gentlemen who are the real authors of this bill are not here, when we point out difficulties of this character so plain, objections so grave, that they are not here to give us some light on the subject.

But, Mr. Chairman, there is another—it seems to me to be—a serious objection to the bill. The first resolution that was proposed by the bill or resolution, whichever it is properly termed, provided the same California Distance Tariff that is now inserted, and I understand there has been no change in the figures of this distance tariff, no changes in that. And it also provided for this Western Classification, signed by Mr. J. T. Ripley, who, if he does not become immortalized by having his name inserted in the Constitution, will certainly be so by the speech of Mr. Johnson last evening; but it was proposed in the first bill that this classification, too, was subject to change; and while I think it was suggested—I think by one of the members of the committee, or the Senator at one of the meetings of the committee—that this amendment does not permanently fix that classification in the Constitution, making it a part of the Constitution—I have read it carefully, and while there may be some possible doubt on that question, I think the fair construction of that instrument, while it gives the Legislature the power to change rates within the maximum of roads to which the maximum applies, I am of the opinion that a fair construction of that instrument permanently fixes that Western Classification, with all its benefits or demerits, in the Constitution, itself.

Now, a classification is one thing, and the making of rates another thing; and while classification necessarily lies at the very basis of rate-making, on account of the great number of commodities subject to transportation, yet it is entirely a different thing, a distinct thing, a distinct matter from the fixing of rates. Classification is this: It is a determination of what commodities shall have the same rate. That is all a classification is. And it is made because it is almost impossible to make a rate-sheet big enough, broad enough, so that people could read it, to cover the thirty-five hundred or four thousand different articles that are now the subject of railroad transportation. And to avoid this it has become necessary to group certain commodities together, and, we will say, a certain number being grouped, they are such commodities as should take equal rates, and they all should be first-class, and the rate is fixed for the first class; and so with the second class. Rate-making, then—I mean classification—is but the grouping of commodities so that the rate may be applied to them. Now, I think, Mr. Chairman, that if this constitutional provision is adopted in its present form, that Western Classification, signed by Mr. Ripley, becomes a fixed portion of this Constitution, and is not subject to legislative change.

Now, there are many defects and difficulties in the Western Classification outside of the difficulty and absurdity of placing it in the Constitution, which will in the proper time be explained to you more in detail than I can give it to you now, by Mr. Smurr; but my attention was called by him to-day to one proposition, and there are others, and I wish Mr. Leeds were here to answer it. If this classification becomes a part of the Constitution, and it could be proved in Court when ques-

tioned, it would not be proved by these books, it would have to be proved by original records published by State authority—it would have to be fixed by the original records of the Western Classification Committee.

But there are commodities, there are articles that are not classified at all, and important ones to the industries of this State. As I said, my attention was called to one—ore—by Mr. Smurr, and instead of being classified, that important commodity to the transportation companies and to the people of this State, instead of receiving a classification and a rate, is, if I have not misunderstood Mr. Smurr—and he will correct me when he comes on the stand if I have mistaken him—is by the Western Classification referred to a special rate. Now, what will you do with the Western Classification? You have got to take that special rate, to which that classification applies, and it does not apply to California, because the ore is not carried under the special rate of that Classification Committee. And there are other commodities of the same kind. Let me just explain for one moment, Mr. Chairman, how these classifications are made. The roads interested desire, each road, to protect and foster the industries of the line of its own road; but there are conflicting industries, and for that reason when the Committee on Classification representing the various roads meets, the classification is made by a system of compromises and concessions until they agree upon that classification which will best serve the roads who are members of and represented by the committee.

East of Chicago there is entirely a different classification from the Western Classification. It is called the Trunk Line, or the Official Classification, and no road east of Chicago uses the Western Classification. Efforts have been made—strenuous efforts—to get the trunk lines east of Chicago to unite with the roads west of Chicago on a common classification, but they won't, because it would affect the industries of those roads in a manner so seriously that they are not willing to yield, and there is no compromise. To-day from Chicago east is the Official Classification, and from Chicago west is the Western Classification. Naturally, the Western Classification would more approximately represent the commodities of this State, because to some extent it is used under it. But while the Western Classification is in use, I am informed by Mr. Smurr there are a thousand or more commodity rates which are taken from that classification and all other classifications as well. You can't do it if you adopt this Western Classification, because when you adopt it as part of the Constitution, or as a law, the goods which are classified there must take the same rate; and if you take one man's commodity out of that class, you would discriminate against the other man's commodity which was left in the class, and you could not do it under other provisions of your Constitution, and therefore that most important thing to the industries of this State, the commodity rate, would be abolished, except in so far as the distance schedule itself does provide for some three or four commodity tariffs; the rest would be abolished. And among other things, and while I am not familiar with this matter, and it will be further explained by the gentlemen representing the Traffic Department of the Southern Pacific Company, the maximum rate upon the industry which greatly concerns the special district of Senator Gesford, the wine industry, is placed by that classification in the second class. Why? Because they don't make wine on

the line of those roads which control the Western Classification. They don't ship it, except to dealers generally in the higher class wines, and this wine comes in the second class, and the maximum rate fixed by this schedule would raise the wine rate from Napa, and the points further up the valley, over and above what the commodity rate which the Southern Pacific Company is now giving the valley. Of course, generally, it would not raise the rates, but you can see where the danger is of adopting a fixed classification, taking away the right to make these commodity rates, taking out these things which are of special interest to the people of this State, taking them out of the commodity class, which is always a lower rate than the class rate, and fixing them formally and forever, until the Constitution is changed, in the second class. It would be a harm to the wine-makers of this State, which the railroad company is not disposed to inflict on them, but which it would be powerless to avert, if wine were to remain forever in the second class, and it must so remain if the Western Classification were to become a part of the Constitution; but aside from that, Mr. Chairman, at the close of the bill is a singular provision, and it comes under the head of "Additional Rules:"

"Railroads shall be considered independently in computing distances; except, however, that a system of railroads consisting of leased, operated, or independent roads controlled under a common management, although working under different charters, shall be considered and treated as one road, and the distances shall be computed over the shortest operated line composed of two or more of said roads."

Now, that was supposed to be a master stroke against the Southern Pacific Company. That is what it was intended for; intended to reach the small roads of the Southern Pacific Company; and while the Southern Pacific Company is operating a great many miles of road in this State, it has some little small branches that are about as weak as any that can be presented here. But it was the design of the framer of this Constitution to except these little lines if they belonged to the Southern Pacific Company from the operation of the maximum clause of the Constitution, and place them under it.

The result would be, of course, that provision could easily be avoided by any company which would be disposed to avoid the law, but the Southern Pacific Company is not. It could be avoided at once by canceling its leases of the little roads and letting them become operated under their own management, and it would not be much more trouble than a stroke of the pen to do it; but let us see how that would work:

If the gentlemen who have the little road running up to Yreka, which was built by the men, women, and children of that town, become tired of operating their road, and they want to sell it to get their money out of it, or they want to lease it to someone so as to have a connecting road, they would probably apply to the Southern Pacific Company. But when they come to the Southern Pacific Company we will say, "What are your earnings?" They will say, "\$1,500 per mile." "Well, then, you are not subject to the limitation of 3 cents per mile." "No." "Well," we will say, "we cannot take your road, because you can run it under the maximum fixed by the Constitution, and we can't. While you own it you can fix your rates regardless of this constitutional maximum, but if you sell it to us or lease it to us, we can't do it." And they have to keep on running their road.

It might be said it is an advantage in compelling these people to hold on to the road; but the principle is wrong; it does not make any difference who owns the road. If roads are to be classified according to their earnings, are you not, by this amendment, instead of classifying roads, which you probably could reasonably and properly do, are you not classifying owners, and can you do that? Can you say that any of these small roads, which, while in their present ownership, can be operated regardless of the constitutional limitation, if it should pass into another ownership, could not be so operated? This Constitution, then, would not apply to roads; it would apply to persons; it would apply to ownership, and not to the roads at all. We say it is not right, even if it can be done.

EARL: Mr. Martin, could that be done under the Federal Constitution?

MR. MARTIN: I don't think so; but, Mr. Chairman, of course it is not my purpose to raise constitutional questions here. It is proper for this committee to consider them, and they should, because the committee is bound to support the Constitution of the United States applying in this State, and it is proper for you to consider it. It would be well enough for me as the attorney for the Southern Pacific Company to say, when you come to the proposition, which the Constitution of the United forbids, pass it; you can't harm us much, because we are protected by the Constitution; pass it and you can't enforce it; it would become to us a matter of indifference, but it is a question of the Legislature and of this committee, because under the Fourteenth Amendment of the Constitution of the United States, corporations are persons, and no State can deny to any person within its limits the equal protection of the law, and that is the declaration of the Fourteenth Amendment to the Constitution; and while you class railroads and class property, you can't class ownership; it is contrary, and it is indefensible and improper of itself; it deprives the gentlemen who own the road of the opportunity of selling or leasing it. It does not apply to the Southern Pacific Company's lines, because it would let those roads alone if the occasion occurred; but it does apply to those gentlemen, because they could neither lease nor sell, and so the Fourteenth Amendment to the Constitution, which protects the strong roads and the big roads, applies also to the owners of the short roads, and you are interfering with the right of the disposition of property of these small roads when you say: "If you run them and own them yourselves you shall not be subject to the constitutional limits; but if you sell them to another, that person shall not have the use of the property which you had; you cannot confer upon them the privileges which you have secured, to the property which you have secured to yourself by investing your money;" and doesn't that debar them of the power of disposing of it? And it is often so, that where an unjust effort is made to reach particular persons under the form of law, that the effort overreaches itself. And this is a fair illustration.

It was desired and intended that if a small road was operated by the Southern Pacific Company, or any other company, for that matter, whose gross earnings exceeded \$4,000 a mile, that they should not have the power to use the property as the original owners had. Now, as I have said, the Southern Pacific Company have got just as many little roads in this State as the rest of them, and the effect would be, while they are

extending and building these lines, such as the branch road in Colusa, out to Fruto, such as the numerous little branch roads that are being built in the San Joaquin Valley; while they are doing this, your constitutional amendment would compel them to charge upon these little roads the same maximum that applies to the main line of the company; they couldn't build their roads, and they couldn't operate them, and they couldn't do it. I do not believe that railroad men, as a rule, build railroads as a matter of charity; they build them just exactly as every other business man conducts his business, to make money out of it. And if you put a bar, if you could do it, in this provision, upon the small branch roads of the Southern Pacific Company, it would not build any more, and they could not operate them without a loss, and it is not so charitable to the public, I believe, as to operate these roads for the benefit of the public at their own expense entirely. Now, you can see from any fair construction of this matter that the law itself is defective. It is badly drawn; it was aimed at the Southern Pacific Company, but it is like the blunderbuss loaded with scrap iron; it shoots everybody in the neighborhood, and that is why the gentlemen representing these small roads are here. It was not aimed at them, and they were told it was not aimed at them, but it reaches them all the same.

Does not that show that this bill has not been drawn with that care which a property law, much less a constitutional amendment, should be drawn? But, Mr. Chairman, this is an endless subject, and I am not going into the details of this matter further than to call your attention to these, which I conceive to be the defects of this law; and if there could be an answer shown to us now, or if there could be an opportunity for us to reply to the answer, or at least consider it, we should feel better satisfied than we are to have to leave this committee without an opportunity of hearing the answers to be made to these objections. We can see no answer to them. Perhaps it is our fault, but it is our misfortune that we will not have the opportunity of being enlightened.

I don't know, Mr. Chairman, what you will think about this matter when it is submitted; but the Senate would like—I know the Senate would give us every opportunity, and would only be too glad to have this, or any other objection pointed out; but as I have said, Mr. Chairman, there have been so many changes from the beginning, it shows clearly, or ought to show to every one, that the attention to this matter has not been given that its importance demands. And after the pledge that I have referred to, under which some members of the Legislature were elected and some were not, after that pledge was given out as being the plan and purpose of the Traffic Association, it wasn't but a few weeks until entirely another but different form from this was also announced. And I would like to call your attention, if you will pardon me—I didn't mean to keep you so long—to what was announced that the California Traffic Association contemplated. They have charged about so much, that it is hard work to keep up to the pace. Now, this is from a paper by no means unfriendly to the Traffic Association, and I read an extract from it, because it is given out to the public for the purpose of informing the public of the plans and purposes of the legislative committee:

"We find, too, that there is in force in Kansas a schedule of railroad charges, termed the Kansas Local Distance Tariff, based substantially on the idea of a terminal charge, and a rate per mile per movement. It

is found to be (that is, the Kansas Distance Tariff) fair and sufficiently remunerative to the railroads in Kansas, and we believe it can safely be adopted in this State as a substitute for existing rates, to be in force until others are lawfully adopted."

Now that is a plain, square declaration that they have drawn the law, based upon the Kansas Distance Tariff; which they believe to be fair and remunerative to the roads in California; that is the proposition. Now you would naturally expect that if a statement was given out to the public in that form, that when the bill of the Traffic Association was presented, that it would be strictly in accordance with this declaration, the Kansas Distance Tariff which they believe to be fairly remunerative to the roads in Kansas, and sufficient for the railroads in California. Now, before the rates in Kansas could be a fair measure for the roads in California, the conditions of construction and operation would have to be the same, together with the density of the traffic. It would be only when all of these conditions were the same that the rates of one road could be measured by the rates of another. It was stated by Mr. Leeds that the roads in California could be operated and constructed as cheaply as the roads in Kansas. Now, that was a singular statement to make—that the roads in California, over which every member of the Legislature has ridden, and some of you over the roads in Kansas—to announce, as Mr. Leeds did, that the roads in California were as cheaply constructed and as cheaply operated as in Kansas. Is there a tunnel in the State of Kansas? Is there a mountain in the State of Kansas?

But, what do you do when you start from San Francisco? When you go north, you go to the cañon of the Sacramento, and reach the vicinity of the Siskiyou Mountains; if you go east, you have to cross the Sierras before you reach the State line. If you go south, you encounter the Coast Range and Tehachapi Mountains. There are no mountains on the west, because there is no land; but there is no direction that you can go from San Francisco without going over grades and through tunnels and around curves, and yet the statement is made to this committee, and in the presence of the assembled gentlemen, that the roads of California can be as cheaply operated, as cheaply constructed, as the roads in Kansas. Now, we have some showings on these matters; showings made by Mr. Curtis, who is in charge of the tracks of the roads, the maintenance of way; to be made by Mr. Gray and Mr. Smurr, who are in charge of the traffic of the road; to be made by Mr. Lansing, the Secretary and Controller, who has charge of the finances of the road; and we are glad of this opportunity of showing to you, and showing to the public, so far as we may be able to show the public, the true condition of the finances and earnings, and operating expenses and cost of that road, and they will be shown to you; and while it is an easy matter to sneer at the figures presented by railroad men, I undertake to say that they are entitled to equal consideration with other men in other business. And these figures which they will bring to you, and these statements, are those which are made to the Directors of the road; they are from their reports, which are made to their stockholders and bondholders, and they must be exact, because there are more people interested in them than the persons engaged in operating the road.

We will show you these things in order to demonstrate that the railroads could not be constructed and operated as cheaply in this State as

in Kansas. Now, would you not expect to find the Kansas Distance Tariff, which they say is sufficiently remunerative to the roads in Kansas, and they believe ought to be in California; wouldn't you expect to find it; don't you expect that bill is drawn from the Kansas Rate Tariff? Anybody, most, would believe it. Senator Gesford, if he has read this announcement of the Traffic Association, must, too, believe it; that the bill is drawn substantially from the Kansas Distance Tariff. Now, Mr. Chairman, have you got the bill?

EARL: Yes, I have it here, Mr. Martin.

MR. MARTIN: Now, the Kansas Distance Tariff runs in limits of five miles and under; ten miles and over five; fifteen and over ten. Now, Mr. Chairman, have you got the place for the first class? The Kansas Distance Tariff, which is believed to be fairly remunerative to the roads in Kansas, and believed to be the same for the roads in California, gives merchandise in cents per hundred pounds, five miles and under, 13 cents. What is it there?

EARL: Three and three quarters.

MR. MARTIN: Thirteen cents in Kansas and $3\frac{3}{4}$ cents in this State. The Kansas Distance Tariff for ten miles and over five gives a rate of 15 cents. What does it give in California?

EARL: Four and a half cents.

MR. MARTIN: Four and a half cents against 15 cents! And the Kansas rates are presumed to be fairly remunerative. Twenty miles and over fifteen; fifteen miles and over ten is 18 cents. What is it there?

EARL: Eight cents.

MR. MARTIN: Eighteen cents against 8 cents. Twenty miles and over fifteen is 20 cents in Kansas. How much here?

EARL: Twelve cents.

MR. MARTIN: Twenty-five miles and under twenty is 22 cents here. How much is it with you?

EARL: Fifteen cents.

MR. MARTIN: Well, Mr. Chairman, I do not wish to take your time, but there is the Kansas Distance Tariff, and you have the California Distance Tariff, and the Traffic Association announced that they had founded their bill upon that distance tariff, notwithstanding the fact that the roads in this State, to our own knowledge, to the knowledge of every man in this room, are far different in the cost of construction, far in excess of those in Kansas. That is the California rate that you have read, and this is the Kansas Distance Tariff which I have. Is it fair? Is it right, to give out to the public in the name of the Association or any member that they are adopting the Kansas Distance Tariff and bring that in after that assertion without an explanation—and even the Senator, the Senator who introduced the bill, until this moment has rested under the belief that he was introducing the Kansas Distance Tariff instead of that one. Eighteen cents, 8 cents; 13 cents against $3\frac{3}{4}$; and it runs up to the distance of 500 miles, not perhaps so great, but always below, and materially below, the Kansas Distance Tariff. Now, why is that? It is not right in a business way; it is not proper.

But, we will show you not only that the cost of construction and of operating roads in California is of necessity far in excess of the cost of construction and operation in Kansas, and for that reason that this State ought to have, by reason of this condition and that excess, a much larger rate; yet it is reduced all the way through, and reduced in mate-

rial proportion. Now, it would simply be ruinous to the roads in Kansas even; the roads in Kansas could not operate under it, and we will show to you by the proper showing of these officers of the Southern Pacific Company, the roads in Kansas to a great extent are bankrupt; there is not a mile of construction going on, because their rates are reduced; and then with all these conditions and differences in the cost of operating the roads in California, and with the principle that the Kansas Distance Tariff is remunerative, fair, and believed to be sufficiently so here; instead of being introduced, why, it reduces the figures; but I am going over ground that will be more properly, more amply shown by the gentlemen who will come after me, and who will not present principles, but will present facts.

We are much obliged to this committee for the opportunity of being present and presenting the railroad situation of this State, so far as the Southern Pacific Company is concerned. And we thank you for your patience, and the attention which you have given, and which you will give to the conclusion.

BURKE: Has the Western Classification a different rate from the Kansas Distance Tariff?

MR. MARTIN: Let me explain. The Western Classification classifies commodities into the first, second, third, and fourth classes, as you will see by the bill. Now, in California, under what is called the Local Classification, you will find that articles in the lower classes here are in the first class; some of these articles by reason of that classification have a much higher rate than they would have if they were in the lower class. Articles in the lower classes, two, three, and four, in California would be in the first class; so that commodity has a higher rate by reason of its being in the first class and in the second there. That changes the rate, it changes the class.

BURKE: I understand that, but my question was, Mr. Martin, whether the Kansas Distance Tariff applies to this Western Classification, or whether there was a difference, a different one.

EARL: The Western Classification applies to the Kansas Distance Tariff, as Mr. Leeds told you.

BURKE: But I understand that the Western Classification does apply in California.

MR. MARTIN: Mr. Leeds correctly stated that the Southern Pacific was using the Western Classification, but it is used in the southern part of this State; but it is not used in the simple form as it appears in this book that you have.

EARL: In other words, the Western Classification to-day does not use the rates set down here in that bill?

MARTIN: It does use the rates set down in that bill, because the Western Classification applies to all the rates in Kansas.

EARL: Do you mean, Mr. Martin, that the Western Classification which is proposed to be adopted here applies to the roads in Kansas? The classification of the commodities therein applies to the thirty-five hundred commodities, but the rate that these commodities are to be charged by the roads are not the same as the first class here, and second class here, and third class here, as set forth in this distance tariff; the Kansas tariff is different from the distance tariff which you have just now read.

MARTIN: It is different from the distance tariff shown in this, that

there are higher rates in Kansas than there are in the California tariff, and there is no other difference.

BURKE: There is no such rate, and the differences in Kansas are there?

MARTIN: No, not that I know of; I have the tariff of the road that Mr. Leeds refers to, the Atchison road, and that which is the schedule; you understand that the Western Classification applies to this rate sheet, and if the Western Classification is adopted it will apply to this.

MONDAY, February 6, 1893—7:30 P. M.

Committee met pursuant to adjournment.

W. S. WOODS, attorney for the Nevada, California, and Oregon Railroad, addressed the committee as soon as it was called to order. He said he appeared for J. M. Fulton, Master of Transportation of the Nevada, California, and Oregon, who could not be present. He had a letter from Mr. Fulton, addressed to the committee, and read it. It was as follows:

“RENO, NEVADA, February 4, 1893.

“*Senator Earl, Chairman Senate Committee on Constitutional Amendments, Sacramento:*

“DEAR SIR: I notice by the press that Mr. Leeds, of the Traffic Association, intends being in Sacramento at the next meeting of your committee. He states his willingness to answer any question put to him by any one representing the small railroads of California, and particularly myself.

“Mr. Chairman, I waited in Sacramento from Tuesday, the 24th day of January, until late on Wednesday night, February 1st, for Mr. Leeds, that he might explain to me certain assertions he has made.

“I only left then on account of having waited eight days, and no Leeds. I gave up all hopes, and now do not believe he will come before your committee, or I assure you I would be present Monday evening to meet Mr. Leeds and attempt his entertainment for a time.

“I ask your honorable committee to notice with what perversity Mr. Leeds asserts that the small roads are not affected by his bill. He should explain why they are not, and whether they would be when their earning power increases to the sinful point of \$4,000 per mile per year gross earnings.

“Our table of certain commodities purchased in St. Louis, Chicago, Philadelphia, etc., with freight added, has been criticised by Mr. Leeds. The table was given to your committee, believing that it might assist you in coming to a just conclusion upon this vexed question, which I believe you and your committee desire to do.

“In the criticism alluded to, Mr. Leeds says, I am ‘howling against our own interests,’ that ‘the Southern Pacific Company is robbing us.’ Perhaps so; and even if it were so, my statement of the cost of those commodities is still a fact, and, therefore, does it not show that it costs us more to operate our road than it does Eastern lines? Mr. Leeds says ‘No,’ I say, ‘Yes.’ Again, does the Southern Pacific Company’s line run to Philadelphia, St. Louis, or Chicago? Will Mr. Leeds deny the

fact that the rates paid by us on the shipments enumerated, and which he criticises, are not now lower than when he was Chairman of the Transcontinental Association; did we then hear his voice commanding a reduction of rates?

“Mr. Leeds has made statements before your committee that are not founded on facts. Perhaps—through ignorance, perhaps—he has deceived the Traffic Association, and is trying to stir up a fuss where there is little cause for it. Mr. Leeds has said that he does not see the justice or fairness of the criticism he is receiving by the small roads of this State. Let us see about it. Mr. Leeds, an employé of certain San Francisco merchants, personally having no interest except the salary he receives, comes before your committee and advocates that you recommend for passage to the Senate an amendment to the Constitution of the State of California, whereby the maximum charge of any railroad in California shall not, for passengers, exceed two cents per mile, and that the proposed distance tariff affects every road, large or small, up hill or level, exactly alike. You, Mr. Chairman, by your incisive questions, of which Mr. Leeds did not answer one half, showed the bill to be so devoid of common sense that your committee adjourned, that it might be changed and printed. It came again before you with a clause reading that roads earning over \$4,000 gross per mile per year must not charge to exceed certain rates for passengers or freight. Roads earning less than \$4,000 per mile were to be subject to laws yet to be made by the Legislature. Why did Mr. Leeds attempt to have a law passed giving the small roads of the State but two cents a mile? If it were right and honest, why did he change it? Was it done through ignorance, or was it intended to do wrong? If the former, he is not worthy of consideration; if the latter, he committed a crime. The fact, however, remains, and should be considered by your committee, that he did succeed in getting the honorable Senator from Napa to introduce the proposed amendment, which would ruin every small, or large road, for that matter, in California, if it became the law of this State; and in speaking upon the question he said, if the small roads did lose money, it was a bad investment they had made, and no one was at fault except the investors. Now, he objects to our criticism, and says we are unjust. Mr. Chairman, I think we are not; but that Mr. Leeds, in introducing or proposing, or causing to be proposed or introduced, such a measure, has shown either an evil mind or the most dense ignorance.

“Mr. Chairman and gentlemen of the committee, Mr. Leeds scatters—he scatters badly—he is truly no good as a railroad expert. I do not believe he is good for the Traffic Association of San Francisco, and I think all will bear me out in the assertion that he is a rank failure as a framer of amendments to the Constitution.

“Now, with what you have not heard from Mr. Leeds, and with what you have heard from Mr. Burgin, Mr. Wade, Mr. Kidder, Mr. Bender, and other gentlemen who have appeared before you, I think you will, when considering this very important subject, place Mr. Leeds’ utterances in the niche where they properly belong. His assertion that the Southern Pacific officials are handling the representatives of the smaller roads to its (the Southern Pacific Company’s) advantage, or attempting to do so, is not worthy of notice. It is not a fact. It compares favorably, however, with other assertions made by Mr. Leeds, and I ask you to remember the axiom, ‘false in one thing, false in all.’

"Should Mr. Leeds be present Monday evening, I shall regret not having been there to have heard the wisdom flow from the tongue of the mighty fence-post, water-logged Traffic Association expert.

"I am, Mr. Chairman and gentlemen of the committee,

"Yours, most respectfully,

"J. M. FULTON,

"Master Transportation Nevada, California, and Oregon Railway."

SOUTHERN PACIFIC COMPANY.

(Statement of W. G. Curtis, Assistant to General Manager.)

SACRAMENTO, February 1, 1893.

To the Senate Committee on Constitutional Amendments:

The gentlemen who are credited with formulating the papers now under consideration by your honorable committee, proposing an amendment to the Constitution of the State of California, regulating the rates for the transportation of freight and passengers to be charged and the classification of various commodities to be made by the railroads of this State, have, as we understand from the testimony they have presented before you, based their action upon the broad assumption that the existing rates are unreasonably high, and the classification of commodities arbitrary and unjust.

The plain truth of the matter is that the railroads of California are now occupying, and, if left unhampered by arbitrary and unjust restrictions, will continue to occupy their true and proper position in relation to the commercial and industrial development of this State. Although the classifications of freight may differ in some respects from the classifications in the Eastern States, the differences, whatever they may be, are justified by the difference in conditions surrounding the operations of the railways. The existing rates, as compared with rates prevailing in other States of this Union, are not higher in California, nor out of a fair proportion to the greater value and cost of commodities in every department of industry.

No industry requiring the coöperation of railway carriers has languished, nor has the progress of any legitimate enterprise been impeded through the failure or refusal of railway people to provide the needful facilities at fair rates and under conditions reasonable and just. On the contrary, every project looking to the development of the State, and to the increased prosperity of its people, is fostered and encouraged by the railway.

It has been given out by the gentleman representing the Traffic Association of San Francisco, who, we are told, formulated the proposed amendment to the Constitution, and testified before you in favor of its passage; who has not been in the State of California, I believe, more than a year, and whom, we believe, has traveled but little throughout the State, but has spent the most of the time of his residence here in the city of San Francisco; who, when asked by you, Mr. Chairman, was unable to name all of the railroads in this State other than the Southern Pacific—

that the Southern Pacific Company is the especial object of attack by himself and the people he represents. We cannot believe that he represents the views of the merchants of San Francisco or the people of this State. The principal owners of the Southern Pacific lines, Mr. Huntington, Senator Stanford, and their associates, were among the earliest of California pioneers, and their interests have been identified with this State ever since. They have certainly done much to advance the general interests of the State; they have done much more than any other individuals or associations to induce the investment of foreign capital in the railroads of this State, which have done so much to build up California. These railroads have so stimulated production and facilitated transportation that not only California wheat, but California wine, California fruits and vegetables, dried and in cans, find markets in the Old World. The experiment of shipping green fruit to England has been tried. It is not quite yet a success, but it will succeed, and shipments of California commodities to the eastern side of the Atlantic will increase until England and Germany will, if indeed they do not now, pay back to California for its productions far more than they are entitled to demand from the States, on their capital invested within its borders. We submit to you that the Manager of the Traffic Association does not represent the views of the people who are identified with the permanent and enduring interests of this State; and we believe the majority of the members of the Traffic Association agree in this view.

With your kind permission, I shall speak only of the operating service, that is to say, the conditions affecting the work of maintenance of equipment, maintenance of way and structures, and conducting transportation, including the train and station service of the railroads operated by the Southern Pacific Company, formerly thirty-seven in number (see page 362 of California Railroad Commissioners' report for 1892), but now consolidated into six companies. Officers of these companies will ask your indulgence to present various other matters. We have nothing to conceal from our patrons or from you gentlemen. Our only desire is that you shall know the exact and literal truth with respect to our roads, their operating conditions, and relations to the public.

Railway operation in California is more expensive than in Eastern States; first, because of the difference in physical characteristics. The physical characteristics of California are, as compared with the Mississippi Valley and Atlantic Coast States, peculiarly adverse to railway construction, maintenance, and operation. The State of Kansas typifies the great valley States west of the Mississippi; there are no mountains in that State. The general surface is an undulating plateau, with a gentle slope downward from the western to the eastern border. The State of Indiana, in its topography, typifies the prairie States generally; at least two thirds of the State is level or gently undulating land. There are no mountains, or even hills, of any size in that State.

California has an area of one hundred and fifty-six thousand square miles, or about one hundred million acres of land surface, which has been classified topographically as follows:

Mountainous.....	82,000 miles, or 52 per cent.
Rolling, or "foothills".....	12,000 miles, or 8 per cent.
Valleys.....	25,000 miles, or 16 per cent.
Marsh, or tule.....	2,000 miles, or 1 per cent.
Desert.....	35,000 miles, or 23 per cent.
Total.....	156,000 miles, or 100 per cent.

For the industrial development of California, railroads must be built and operated to traverse the sterile desert regions, and ascend over barren mountains, where the expense of operation is costly, and where no traffic can be furnished to contribute toward the expense of operation and maintenance. The country along nearly 25 per cent of the Southern Pacific lines in California furnishes no local traffic to be carried. Railroad lines connecting the central basin region of California with other parts of the State, and with adjoining States and Territories, must cross high mountain ranges, where the necessary cost of construction and maintenance of the roads is many times greater than in the States east of the Rocky Mountains. The railroad line of the Southern Pacific, connecting Northern and Southern California, crosses the Tehachapi Pass, at an elevation of four thousand feet; the Soledad Pass, at an elevation of three thousand two hundred feet; passing through twenty-seven tunnels, one of them one and one quarter miles long; and between Southern California and Arizona, the San Geronio Pass, at an elevation of two thousand six hundred feet. The line connecting California and Oregon crosses Black Butte Pass, at an elevation of three thousand nine hundred feet, and the Siskiyou Mountains, at an elevation of four thousand one hundred feet, and passes through twelve tunnels. The Central Pacific line, connecting California and Nevada, crosses the Sierra Nevada Mountains at an elevation of seven thousand feet, passing through seventeen tunnels and thirty-three miles of snowsheds. The total rise of strictly mountain grades on the railroads operated by the Southern Pacific Company in California is over thirty thousand feet, in a distance of a little over five hundred miles, and on the entire system, west of Ogden and El Paso, the total length of mountain grade is over seven hundred miles, and the total rise nearly forty-two thousand feet.

The power required to move a given quantity of traffic over these mountain grades is from five to seven times greater than on the comparatively straight and level lines of the Eastern so-called prairie States.

The profiles before you [various important profiles and a relief map of the United States were here exhibited to the committee] indicate the difference in grade of the systems of roads east and west of the Rocky Mountains more clearly and forcibly than can be expressed in figures, but it may not be out of place to state that, for the roads operated by the Southern Pacific Company in California, covering a mileage of 2,895 miles, the length of level track is only 548 miles; the length of curved line, 646 miles; the number of degrees of curvature 128,319°, equal to 356 complete circles; the sum of ascending grades in feet, 42,862; descending grades, 26,035 feet; total rise and fall of grades, 68,897 feet.

There are 86 tunnels on the Pacific System lines of the Southern Pacific Company, aggregating 66,701 feet; 54,000 feet is in the California railroad system, which includes the Siskiyou Mountains along the boundary line between California and Oregon; 69 of these tunnels,

aggregating 49,448 feet in length and costing over \$4,500,000, are within the State boundaries of California. These tunnels have been costly to construct and are expensive to maintain. There is practically no similar expense for either construction or maintenance work in the Mississippi Valley States. Taking the snowsheds and tunnels of the Southern Pacific lines in California together, their aggregate cost is over \$6,000,000, or probably a sufficient sum to build and equip over 200 miles of railroad in Kansas. If invested in Kansas railroads, and if the San Francisco Traffic Association's estimate of uniform distance tariff covering railroad rates in that State is correct, it might be expected that interest at a fair rate might be earned upon this \$6,000,000 investment; but the investment as it stands in California brings no direct returns. It is an extra cost connected with the construction of something less than 40 miles of railroad, and a constant expense is required for maintenance of the heavy timber work required in a great portion of this tunneling.

The damage consequent upon washouts, landslides, and snow blockades, is also exceptionally great in the mountain regions. From these causes, not longer than three years ago, railroad communication between California and Oregon was suspended for more than two months at a time.

At present, on the South Pacific Coast road, between San Francisco and Santa Cruz, there is a great landslide in the Santa Cruz Mountains, which has crushed down a tunnel timbered and braced as strongly as possible. A large force of extra men, as many as could be placed on the work, employing shifts to carry along the work continuously night and day, have not succeeded in reopening the road for traffic, which has now been interrupted thirty-four days. This road has been so damaged by other slides and washouts that it is more than probable that, taking into account the increase in operating expenses, together with the decrease in earnings, consequent upon the interruption of traffic, the road may not this year earn enough to cover its operating expenses. This line has heavy mountain grades, and considerably more tunnels—at least 50 per cent more—than on the Pennsylvania Central Railroad, and is one of the roads mentioned by the gentleman representing the Traffic Association as showing excessive gross earnings as compared with Eastern lines. Another road mentioned by him in the same connection is the California Pacific, operating 115 miles of line, from Sacramento to South Vallejo, from Davisville to Knights Landing, and from Napa Junction to Calistoga. This road crosses the tule lands between Sacramento and Webster, being subject to overflow and damage by floods, which, from year to year, show a tendency toward a greater height. This particular road, for over eight miles, is protected on both sides of a high embankment with a granite face wall, very costly to construct. If the high-water plane of the Sacramento River continues to rise, as is probable, it will become necessary to build up the embankment supporting the track to a greater height, and, in consequence, remove and replace this walling. The floods of the present winter have been right up to the grade, and the drift deposited by them now lies at the end of the ties for several miles. The timber work on this line is extensive and costly to keep in repair. More than \$100,000 will have to be expended this year in repairs to the bridge over the Sacramento River. Knowing, as I do, the requirements of this road for maintenance, I will say that it needs every dollar that it can earn.

LABOR EXPENSES.

The labor expense on the railroads in the Southern Pacific System in California generally averages more than 30 per cent greater than on the roads east of the Rocky Mountains.

It may be noted that, in the State of Kansas, according to the Railroad Commissioners' report for 1891, page 291, the average daily compensation paid railway employes is \$1 73, while in California and contiguous States and Territories, the rate is about \$2 57, or 49 per cent greater than in Kansas. (On the Southern Pacific lines alone, it is at least \$2 59.) It is to be understood that the daily rate of compensation is computed on 313 days in a year, the basis commonly adopted by Railroad Commissioners in various States.

As nearly as can be estimated, the payroll of the Southern Pacific Company for services rendered in California is \$9,700,000 per annum for about 12,000 employes. Could the rate of compensation be reduced to the Kansas figure (\$1 73 per day), this would become \$6,470,000, or \$3,230,000 less than now paid, or 13 per cent of the amount earned annually in California from transportation of passengers and freight. At the Illinois rate of wages (\$1 93 a day), the saving would be \$2,400,000, or about 10 per cent of the Southern Pacific Company's earnings in California.

The difference between the rates of railway wages, as between the Mississippi Valley and Pacific Coast regions, is well typified by the so-called Atchison properties. For their Chicago, Santa Fe, and California line, the Railroad and Warehouse Commissioners' report, State of Illinois, for the year 1891, shows the average daily rate of compensation for all classes of employes to be \$1 06; for the Atchison system in the State of Kansas, the Railroad Commissioners in their report for 1891, show a rate of \$1 87; for the Atlantic and Pacific Railroad, extending from eastern New Mexico westward through Arizona into California, the rate is \$2 01; and on the Southern California Railway properties the rate of wages is \$2 71, as shown by the California Railroad Commissioners' report for 1892.

In this connection, the attached table (Exhibit A) is presented, to show the average compensation paid and class of railway employes on the Southern Pacific and San Francisco and North Pacific roads in California, as compared with the Atchison and Illinois Central roads in Illinois.

The efficiency of railway employes—that is to say, the number of tons of freight transported to each person employed—is somewhat less in California than in the Eastern States.

FUEL.

The principal sources of coal supply for use in California are Colorado, Wyoming, Washington, British Columbia, Australia, and England. There is no coal in California suitable for use on locomotives, while, on the other hand, roads east of the Rocky Mountains generally run through coal mines, not only producing coal for their own operations, but being an important item of commercial tonnage to be moved.

The cost of fuel on Pacific Coast roads, being fully 20 per cent of the total expenditure for maintenance and operation, is a very important

item to be considered in fixing railway rates. The total cost per ton for coal, delivered on locomotive tenders, for the past five years, on the Southern Pacific Company's lines in California, is between \$6 40 and \$6 50. This is a lower rate than the similar average prices paid by other roads in this State, for the reasons, first, that through the ownership or control of coal mines and of ocean steam colliers by controlled or friendly companies, the Southern Pacific is able to secure the output from such mines at a minimum rate, and to so maintain its standing in the market as to prevent combination by other mine or ship owners, or "cornering" by dealers to unfairly raise the price of fuel required by the Southern Pacific Company.

For the year 1891, the cost of fuel per mile run by locomotives on the Pacific System lines of the Southern Pacific Company was 19.12 cents, which is somewhat lower than the cost in California. As against this, we find the corresponding cost on various Eastern roads to be:

Road.	Cost Fuel per Mile Run—Cents.	Year.
Denver and Rio Grande Railroad.....	4.55	1891-2
Chicago, Rock Island, and Pacific Railway.....	5.78	1890-1
Lake Shore and Michigan Southern Railway.....	5.18	1891
Missouri Pacific Railway.....	5.89	1891
Wabash Railway.....	4.50	1890-1
Chicago and Northwestern Railway.....	6.89	1890-1
Atchison, Topeka, and Santa Fe Railroad.....	8.57	1891-2
St. Louis and San Francisco Railway.....	6.42	1891-2
Average.....	5.96	

The gentleman representing the Traffic Association of San Francisco has testified before you that on account of the equable climate in California there is required only fifty-six pounds of coal to run a locomotive one mile, while double the quantity is required to perform the same service in Eastern States. He has taken, in support of this assertion, the report of the Atchison, Topeka, and Santa Fe Railroad System for the year ending June 30, 1892, and the annual report of the Southern Pacific Company for the year 1891. In connection with the figures he has produced from these reports, he carefully avoided to state to you that although the quantity of fuel used per mile run appeared to him greater, the cost of fuel per locomotive mile on the Atchison, Topeka, and Santa Fe Railroad system is shown, on the same page with the other figures he considered, to be 8.57 cents, while on the Pacific System lines of the Southern Pacific Company the cost of fuel per mile run is shown to be 19.12 cents.

Neither did he tell you, which is true, that those statistics, instead of representing the conditions east of the Rocky Mountains, apply to seven thousand one hundred and thirty miles of the Atchison System, covering railroads in the Republic of Mexico, the Atlantic and Pacific Railroad in the Territories of Arizona and New Mexico, and the Southern California Railway in this State, only about one seventh of the mileage being located in the State of Kansas.

Further, there is a blunder in computations, leading to grossly erroneous results, but apparently the gentleman lacked the judgment and practical experience in railway operation to detect the error. As shown

by their 1891 report, the Southern Pacific Company (Pacific System) locomotives ran 20,356,680 miles, consuming against this mileage 570,102 tons of coal, and 141,793 cords of wood. This 141,793 cords of wood was not taken into consideration in Mr. Leeds' calculations, but it was used largely in locomotives running over the Sierra Nevada Mountains, over the Siskiyou Mountains, and on the lines in Oregon. He simply ignored the wood altogether, and took the total engine mileage running with wood as well as coal, and divided it into the coal alone; thus producing his figure of fifty-six pounds of coal per locomotive mile. From one and a quarter cords of wood to two cords are required to enable a locomotive to perform the same service as with a ton of coal. The rule commonly used by Eastern roads is to compute one and one half cords of wood equivalent to one ton of coal. Making that allowance in this case, we find that sixty-five pounds of fuel, instead of fifty-six pounds, are required to run a locomotive one mile on the Pacific System lines of the Southern Pacific Company. Now, as to the gentleman's figures on the Atchison, Topeka, and Santa Fe road: Page 82 of the annual report of the Atchison, Topeka, and Santa Fe Railroad Company, for the fiscal year ending June 30, 1892, shows the miles run by locomotives to be 34,383,445; the tons of coal used, 1,354,693; cords of wood used, 31,565. Again, figuring the wood at one and one half cords equal to one ton of coal, we have the equivalent of coal of 1,375,603 tons, or 2,751,206,000 pounds, used by locomotives running 34,383,445 miles. Dividing this mileage into the fuel, we find the Atchison lines in question, including, with the lines in Kansas, those also in California, Texas, and Mexico, used eighty pounds of coal to run a locomotive one mile, instead of one hundred and eight pounds, as stated by Mr. Leeds. It would appear that his figures were computed by taking the total quantity of fuel as above used by locomotives in all classes of service and dividing it by the mileage only of those locomotives which run in revenue train service; while the correct comparison on the face of the figures is, for the Atchison lines under consideration, eighty pounds of coal per locomotive mile, and for the Pacific System lines of the Southern Pacific Company sixty-five pounds of coal per locomotive mile. It is not true that the Atchison lines in question correctly typify the coal consumption of the Mississippi Valley region.

By further investigation, Mr. Leeds might have found that the consumption of fuel to move a car one mile on the Southern Pacific Company, Pacific System, was 7.18 pounds; on the Missouri Pacific Railway, operating mainly in Kansas and Missouri and entirely in the Mississippi Valley, 6.8 pounds; on the Atchison, Topeka, and Santa Fe, 7.8 pounds; this slightly higher figure being undoubtedly due to the fact that a very large portion of the Atchison line here considered lies in Mexico, Arizona, and California, where, as a matter of fact, and by reason of the difference in physical characteristics, more coal is required to haul a car one mile than is necessary in the Mississippi Valley. The truth of the matter is, as is well known to practical railroad men, that if there is any difference, more coal is required to perform a given amount of train service in California than in the Eastern States. The following figures for various lines, including the Atchison, Topeka, and Santa Fe, and the Northern Pacific, both of which extend to the Pacific Coast, corroborate this fact:

Road.	Year.	Pounds of Coal per Car Mile.
S. P. Co. (Pacific System)	1891	7.18
D. & R. G. R. R.	1892	8.8
C. R. I. & P. Ry.	1890-91	6.18
Mo. Pac. Ry.	1891	6.8
Wabash Ry.	1890-91	6.5
C. & N. W. Ry.	1890-91	7.3
A. T. & S. F. Ry.	1891-92	7.8
St. L. & S. F. R. R.	1891-92	7.5
Nor. Pac. R. R.	1891	7.2
Chicago & Alton	1890	6.75
Penn. R. R. Co.	1891	5.82

Average Eastern roads, 7.06; Pacific System, 7.18.

I should not fail to mention in this connection that many Eastern roads running over coal fields and taking their coal supply to locomotives from the mouth of the mines, find it to their advantage to burn screenings and coal slack, which is either purchased at a low figure, or in many cases, given to them by the mine owners, who are desirous of getting rid of this, to them, unsalable material, this slack going into the fuel account, ton per ton, with the good coal, while its cost is merely nominal.

The average cost per mile run for fuel for the Southern Pacific Company's lines in California for the past five years averages 21.5 cents, which is from 15 to 25 per cent higher than the total cost of running a locomotive one mile on many Eastern roads, including the expense of fuel, repairs, service of engine men, oil, waste, storage, etc.

COST OF MATERIALS.

The average cost of materials for railway construction and maintenance is generally higher in California than in the Mississippi Valley. Pig iron, suitable for the manufacture of wheels and many classes of castings used for rolling stock, bridges, etc., must come from the East, and the handling charges laid down at our machine shops here in Sacramento increase the cost from 30 to 40 per cent, as compared with similar cost to Eastern manufacturers of railway supplies. The insurance, freight, primage, and handling charges on steel rails make the cost of this material here more than 30 per cent higher in California than in the East. Many other materials for railway construction work, as fishplates, bolts, nuts, spikes, as well as tools, machinery of all kinds, either manufactured in the East, and shipped out, or manufactured here, are relatively more costly here in about the same proportion, that is to say, from 30 to 50 per cent higher. It costs, for instance, at the present time, \$1,000 to bring a locomotive from Eastern works to California. The Pacific Coast produces no coal suitable for foundry uses or blacksmith work, nor anthracite coal, required for heating cars. Both Lehigh and Cumberland coal, for these purposes, are brought from the Atlantic States, the transportation and handling charges more than quadrupling its cost to California, as compared with Eastern railroads.

Oak lumber for draft timbers for cars, and for many other purposes in building and repairing rolling and floating stock, costs, f. o. b., in Kentucky and Indiana, from \$12 to \$15 per thousand feet, board meas-

ure. The expense of freight and handling brings the minimum cost in Sacramento up to \$70 per thousand feet, board measure. The current market quotation in San Francisco is, I believe, \$90 per thousand feet, board measure.

With the existing and prospective volume of traffic to be moved, the rates for the transportation of freight and passengers in California should, on account of the higher cost of labor, fuel, and miscellaneous supplies, to say nothing of the greater requirements for fixed charges on account of the higher cost of the roads in California, be at least 35 per cent higher than similar rates which would be fair and equitable in Eastern States.

In this connection, it is proper to state, that because the States and Territories adjoining California on the east do not produce lumber or hardly anything that is required in the maintenance of the Southern Pacific line in those regions, many classes of materials are bought in California for operations outside the State, and many articles are manufactured in California from crude materials purchased here and shipped over for the operation of the road and maintenance of its way and structures in adjoining States. For these reasons, the amount paid out by the Southern Pacific Company to California dealers and producers exceeds the earnings of the company on freight and passengers taken up and laid down in California.

In summarizing his views, the Manager of the San Francisco Traffic Association stated, in effect, that the railroad earnings per mile in California were greater than in Nebraska, Kansas, and contiguous States, and that the cost of operating roads in California was not greater than in those States. As a matter of fact the cost of operating railroads in California is very much higher than in the region he mentioned, and railroad men who have made a study of these things will all agree that, aside from the higher cost of other items of expenditure, if the railroads in that region were obliged to pay for labor and fuel the rates which apply on the Southern Pacific lines in California to-day, they would not earn their bare expenses of operation. Figures are not necessary to prove this proposition to railway experts, who, from practical experience and personal observation, have informed themselves as to the difference in operating conditions. As corroborative of this fact, however, we present to your consideration a statement compiled from the Railroad Commissioners' report of the State of Illinois for the year 1891; also a similar statement of the five principal roads in the State of Iowa.

[See exhibits marked "B" and "C."]

Permit me to quote to you from the last published report of the United States Interstate Commerce Commission on "Statistics of Railways of the United States," commenting on the statistics compiled under authority of the Commission, which are believed to be the most complete that have yet been prepared, the railways of the United States being therein divided into ten territorial groups:

"It is believed that the attempt to group statistics will be completely justified by the facts presented in the present report, for the comparisons which it renders possible throw new and important light on the operations of railways in the United States. They show, for example, the great divergence in the conditions under which railways are operated. Thus, whether we consider the gross earnings per mile of line,

the operating expenses per mile of line, number of locomotives per one hundred miles of line, passenger mileage per mile of line, freight mileage per mile of line, revenue per passenger per mile, revenue per ton per mile, per cent of passenger earnings to total earnings, per cent of freight earnings to total earnings, value of railway property per mile of line, or any other prominent fact pertaining to railway economy, the variations are so great as to dispel the thought that there is any approach towards uniformity in the conditions under which railways are operated or in the administrative rules to which they conform."

Among other comparisons made of those groups, the statistician shows that, out of 76,207,000,000 tons of freight carried one mile in the United States, only 1,944,000,000, or 2.7 per cent, were moved in group number ten, including California, the largest in area of all the groups. Out of 11,347,000,000 passengers carried one mile in the United States, only 631,000,000, or 5.8 per cent, were in group ten. Of the 62,625,000 people reported by the census of 1890, only 2,350,000 were in the States and Territories of Washington, Oregon, Idaho, Nevada, California, Arizona, and the western portion of New Mexico, or 3.7 per cent.

OPERATING EXPENSES.

Of the total expense of operating and maintaining a railroad, about 9 per cent is for general and miscellaneous expense, including administration expenses, printing, taxes, etc., commercial agencies; 22 per cent for maintenance of way and structures; 15 per cent for maintenance of locomotives, cars, and other equipment; 24 per cent for wages of engineers, firemen, station expense for agents, clerks, and laborers, telegraphers, wages of conductors, brakemen, switchmen, flagmen, and watchmen; 30 per cent for fuel for locomotives, steamers, train and station supplies, roundhouse labor, fuel, station attendance, heating, lighting, and inspecting cars and stations, lubricating cars, loss and damages to freight and other property, expense of sleeping cars, parlor cars, etc.

The tendency of many people to overestimate the earnings, and undervalue the expenses of a railroad, most probably arises from the fact that the patrons of a railroad company in their various transactions connected with transportation are chiefly concerned with the rates charged; they are not called upon to inform themselves with respect to the cost of transportation and expenditures other than that which may come under their direct notice, as necessary for the receipt and delivery of freight, the sale of tickets, and the running of trains. In other words, it is probable that the most of railway patrons have some appreciation of the 24 or 25 per cent of the total operating expenses required for engineers, firemen, conductors, brakemen, telegraph operators, station agents and clerks, switchmen, flagmen and watchmen, as above, but understand little or nothing about the 75 or 76 per cent of the expenditures which, so far as they are concerned, do not enforce themselves upon their attention in any way, seeming to go on easily, and to be conducted with so little visible effort as apparently not to require a great expenditure of money.

MAINTENANCE OF SNOWSHEDS.

In California there is something over thirty-four miles of snowsheds which must be maintained. The average annual cost of snowshed maintenance for the past four years has been in round numbers \$194,000. On the Eastern roads in question, there is nothing comparable with this expense. The snow service is also excessively costly on the California lines. For the past four years the average yearly cost has been in round numbers \$137,000. In 1890, in the last snow blockade, the cost of snow service, including the construction and purchase of new snowplows and other appliances for clearing the track, was in round numbers \$500,000. No roads east of the Rockies are obliged to remove snow under such great difficulties as the Southern Pacific. The snowfall with us is deeper and heavier on the Sierra Nevada Mountains than anywhere east of us.

The snowsheds are at all times exposed to damage by fire. Our losses last year from this cause were not less than \$75,000.

TIES.

I must not omit mention of the railroad tie question in order to confess that, when we can no longer utilize them in the track, we do use some of them for fence posts, and some to kindle fires in locomotives; some few we sell to farmers, and I suppose we must save as much as \$5 per mile of road by doing so, instead of burning them up, which is the common way of disposing of them, and is the manner we get rid of our pine ties, and by the way, about one third of these ties we use are pine.

We also practice many other economies not thought of in the Eastern States in our struggles against adverse physical conditions surrounding our operations. A prominent railroad expert once said to me, after spending some seven weeks in a thorough and critical examination of our lines, that from the great care and economy he observed in the use of all our materials, he was satisfied that we must have a place somewhere, where we made things no longer useful for railroad purposes into soap, and he wanted to see that soap factory before he left us. Redwood ties do resist decay better than the oak, cedar, and chestnut ties commonly used in the Eastern States, but they crush down under the rail, and on many of our lines are thus worn out in a shorter time than required for pine and fir ties to fail by decay. By reason of the softness of these ties, their life on curves, of which we have many, is shorter than on straight track. Our ties are transported long distances and are handled over a good many times on their way from the forests on the northern coast of this State, via the ocean, to point of use. On a general average, the cost of tie renewals is a little more in California than in the Mississippi Valley. The following figures corroborate this:

COMPARATIVE COST OF TIE RENEWALS.

Road.	Mileage of all tracks, including sidings.	Ties used in renewals per mile of track.	Mileage of main line track.	Cost tie renewals per mile, main line.	Year.
S. P. Co., Pac. S.	5,639	240	4,711	\$130	1891
Nor. Pac. R. R.	No data.	No data.	4,349	124	1891
A., T. & S. F.	No data.	No data.	7,130	90	1891-2
St. L. & S. F.	No data.	No data.	1,893	113	1891-2
D. & R. G. R. R.	No data.	No data.	1,640	105	1891-2
Tex. & Pac. Ry.	No data.	No data.	1,499	114	1891
C. & N. W. Ry.	5,581	214	4,273	110	1890-1
Wabash Ry.	4,070	171	No data.	No data.	No data.
C., R. I. & P. Ry.	4,197	135	3,409	73	1890-1

Average, except Southern Pacific Company (Pacific System), \$104.
Southern Pacific Company (Pacific System), \$130.

At San Francisco the expense and maintenance of ferry and transfer steamers, and docks and wharves, is much greater than in the Mississippi Valley States. The cost under these headings to the Southern Pacific Company annually is about \$753,000.

Water supply for locomotives, train and station supplies, and many items other than those I have mentioned, are higher with us than in the East.

SLOW DEVELOPMENT OF CALIFORNIA.

California, in many things other than its physical geography, is an exceptional State, and it is just about as difficult to force its industrial development along the same lines as have been followed in the development of the Mississippi Valley, as it would be to level down the mountains and fertilize the deserts to make all of California as level in surface and as productive throughout its area as the State of Illinois. The rights of ownership in the soil, the methods of its cultivation, and the commodities produced from it, are widely different from the Eastern States.

In 1870 the population of California was five hundred and sixty thousand two hundred and forty-seven; in 1880, eight hundred and sixty-four thousand six hundred and ninety-four; in 1890, one million two hundred and eight thousand one hundred and thirty. The miles of railroad in California in 1870 were nine hundred and twenty-five; in 1880, two thousand one hundred and ninety-five; in 1890, four thousand three hundred and twenty-eight. Thus, from 1870 to 1880, the increase in population was 54 per cent; in railroad mileage, 137 per cent. From 1880 to 1890, increase in population, 40 per cent; railroad mileage, 100 per cent. For the two decades from 1870 to 1890 the increase in population was 115 per cent; in railroad mileage, 357 per cent.

Other statistics bearing closely upon this subject will be presented for your consideration by Mr. Richard Gray, our General Traffic Manager, and will show that, when fairly contrasted with other States, Californians have reason to congratulate themselves on their progress, and the railroads of this State have no reason to be ashamed of the results of their efforts to promote its progress.

After a village existence of some ten years as Fort Dearborn, the birth of Chicago as a town dates from August 4, 1830, when it was surveyed

as the town of Chicago, and a plat of the survey published by James Thompson. In 1870, forty years later, the population had grown to two hundred and ninety-three thousand nine hundred and seventy-seven. The town of San Francisco, existing theretofore as a small village, began its existence as a city in 1849 and 1850. On its fortieth birthday, or in 1890, it numbered two hundred and ninety-three thousand nine hundred and ninety-seven people, outranking Chicago when it had reached the same age by twenty inhabitants.

Taking into comparison with California the so-called Northern, Central, and Northwestern States, as shown by the first census taken in those States after their admission into the Union, in comparison with the census figures forty years later, we find that, by the census in 1890, forty years after the first census, in 1850, California had increased its population to thirteen times, while the average of the States of Illinois, Indiana, Ohio, Iowa, Michigan, and Wisconsin was only eight times, the rate of increase in each State being as shown by the following table:

Illinois, population in first forty years increased.....	30 times.
Ohio, population in first forty years increased.....	8 times.
Indiana, population in first forty years increased.....	9 times.
Iowa, population in first forty years increased.....	10 times.
Michigan, population in first forty years increased.....	8 times.
Wisconsin, population in first forty years increased.....	5 times.

It is commonly assumed that dense rural population forms the basis of real and enduring prosperity in any State. This may or may not be true. Many facts can be adduced to show that the cultivation of land in great ranches founded largely upon the Spanish grants is, under the peculiar climatic conditions of California, beneficial rather than detrimental to this State. Be this as it may, railroad managers would like to see more people settled in California, and no inducement offered, for example, to emigrants who in recent years have settled in the State of Washington, have exceeded in liberality the similar inducements offered by the roads leading into California. In fact, the Washington roads merely copied the rates previously offered, and duplicated the emigrant cars previously built by the California lines. The Central Pacific Railroad was the first road in this country to design and build emigrant cars. People immigrating to the State of Washington, and settling there, did so merely because land was plenty, and cheap, for sale by the Government and the railroads, at not more than \$2 50 an acre. This class of people, generally without capital, did not come to California, because desirable land was not offered so cheap here. Nevertheless, there are many people who appreciate the great productive value of lands in California, and are coming to us all the time; but unfortunately, this class of people is small as compared with the immigration that is attracted only by cheap lands, and consequently California's increase in population is in the very nature of things comparatively slow, though all of us who are familiar with the capabilities of our wonderful State of California know that in the light of a permanent investment, California lands, whatever may be their price, are always cheap in comparison with the lands of Oregon and Washington.

There are three classes of large landholders in this State. First, those who cultivate their own land, raising grain on a large scale, plowing by steam, or with great teams of animals propelling gang plows, turning over many furrows at a time, and harvesting the grain with

combined heading and thrashing machines that take the grain from the stalk and drop it into bags in wagons alongside or upon the field behind; thus doing nearly all the cultivation by machinery, and employing only a very little labor, and that not continuously, but for short periods at seed time and harvest. This method largely prevails in the Sacramento Valley, in the north end of the San Joaquin Valley, and, to a less extent, in other localities.

Another class of large landholders rent out their land to tenant farmers, taking as their rent a certain fixed proportion of the crop. These farmers are generally able, independently of transportation companies or all other outside influences, to so adjust their rental as to fix the conditions of living among their tenants. Many of these landlords are broad and liberal-minded men, who see to it that their tenants who are up to or over the average of men in thrift and diligence, reap their fair share of the rewards of industry, and consequently prosper in their work. Others are said to be more exacting.

In this connection I know of a case, where a railroad was built, affording transportation facilities to a fertile country, but at such a distance from the markets that, up to the time the railroad was built, it was merely used as a cattle range. It is now one of the most productive grain regions in the State. The grain rates, when the road was first built, were placed at figures then deemed to be fair. As the grain tonnage increased, the rates were constantly lowered. A gentleman who owns one of the largest ranches along this line, who rents his land to be farmed by tenants, at first took as a rental one fifth of the crop. When the first reduction in grain rates was made, he demanded and received one fourth of the crop. When the next reduction to the existing rates was effected, he demanded and now receives one third of the crop. Though large quantities of grain are now produced along this line, the ranches have not been divided up, the increase in population has been small, the growth of towns along the line has been slow, and the railroad rates are now down to bedrock. This gentleman, who has raised his rent as the railroad rates have been reduced, has more than once applied to us to make a further reduction in rates, because he says the homes of some of his tenants lack the ordinary comforts of life, and he is even obliged to advance them money to buy the prime necessities in the way of food.

While this may be an extreme case, I personally know of other land owners who raise their rent whenever a reduction in railroad rates can be secured. This may be only good business policy on their part; but, under such circumstances, the railroads must not be blamed if an industrious and thrifty population of small and independent land owners does not establish itself along every new road built in this State. Where land is not for sale at some price, even though it be a high price, in small tracts to suit the purchaser, a dense population of independent land owners cannot be established, no matter how many roads we build, or at what figures the rates for transportation are fixed. One of our company's new roads in the San Joaquin Valley, built a little over a year ago, runs for over fifty miles through the lands of one firm. We hope and believe that the firm will construct irrigation ditches or sink artesian wells, both being feasible, fitting the land to be handled in small tracts, and proceed to cut it up and offer it for sale at such figures as will bring people into that region; but the matter rests with the land owner, not

with us, and he will be guided by his own interests. We can only offer him transportation at reasonable rates for anything that may be produced on his land.

In regions where the annual rainfall is insufficient to produce crops other than the cereals, and where, consequently, irrigation is required—and this is true of a greater portion of our State—the natural sequence of events is perhaps for the land to be first held in large tracts, in order that capital may be safe in bringing the water from the rivers and mountain streams, so that the cultivation of land on a small scale may be profitable, even though its price is high. Doubtless this is true, and, as I said before, we have no complaint to lodge against the large land owners, or others who believe that they are doing what is right to build up this State. But these conditions do affect the railways, and their managers cannot change them. They must adapt their operations to them, and only ask that they be not blamed that, because of the difference in conditions which affect railways in common with all other interests, the State of California is, in its progress and development, different from States east of the Rocky Mountains. I have said that the railroads of this State are fairly and honestly adjusting their operations to the needs of their patrons. In this connection, I desire to call your attention to some facts that, to my mind, are of great significance in corroboration of this statement.

The counties of Sacramento, Solano, Yolo, Sutter, Yuba, Colusa, Glenn, Butte, and Tehama, covering the Sacramento Valley, with navigable waterways, affording the most effectual protection against unreasonable railroad rates that can possibly be provided in any country, traversing every one of these counties, showed an increase in population in 1890 over 1880 of only 9,438, or 7 per cent; 5,778, or more than half of this increase, being in the cities of Sacramento and Woodland; leaving for the rural population, including the smaller towns and villages, an increase of only 3,571, or 4 per cent. Some of the counties have lost in population, and to some slight extent, this may be due to the fact that there has been a decadence in the mining industry in those which extend up on the western slope of the Sierras. In Yuba County, for example, where the loss in population in the last ten years was 1,648, 330 being in the city of Marysville, which is located upon a navigable river, and in Butte County, which in the ten years lost in population 782 people (406 of the loss being in the town of Chico, the county seat), the fruit grower has gone upon the foothills to replace the miner, and oranges are already being produced on a commercial scale in these counties. The county of Tehama shows in 1890, as compared with 1880, an increase in population of 615 people, but this increase is all in the towns, the town of Red Bluff alone showing an increase of 502, the village of Vina 129, and the village of Corning 210.

San Joaquin County, one of the most fertile in the State, and perhaps in a position to be the most independent of railroads of any county in this State, the San Joaquin River, with its tributaries and navigable sloughs, offering transportation to market in easy competition with the railroads throughout the county, shows an increase in population, in 1890 as compared with 1880, of 4,280 people; 4,142 of this increase is in the thriving manufacturing city of Stockton, leaving for the country and smaller towns an increase of only 138 people in ten years. The same

condition of things exists in Stanislaus County, also served by the navigable waters of the San Joaquin River.

Why is this so? The explanation is simple. In these portions of the State, large ranches, based mainly on the original Spanish grants, exist and are profitably cultivated by their owners. Now, I am not prepared to say that these counties are less prosperous than they should be because of these conditions. But if it be thought that progress in population, as well as in taxable wealth and area of land under cultivation, is to be measured by the mere increase in population, let me point you to some portions of the State of California that depend exclusively upon the lines of the Southern Pacific Company for the transportation of their products to the general markets, to the extent of requiring the railroads to transport deciduous fruits from 2,500 to 3,000 miles from the point of production, to be there marketed in competition with fruits produced in the immediate neighborhood. It is to be especially noted in these cases that every intending settler can in these counties obtain land in small holdings at some price. I do not mean to say that this is not true of the other counties I have mentioned, but that in these counties, there was in the beginning fewer Spanish grants—which, by the way, in their aggregate area of nearly 9,000,000 of acres, cover over 25 per cent of the arable area in this State (when we count in as "arable" every acre of desert and mountain side that can probably be reclaimed)—and it has been considered more profitable to work the land in small than in large farms.

Merced County, in 1890 as compared with 1880, shows an increase of 2,429 people, or 43 per cent, only 600 of this being in the towns. It is true that the San Joaquin River affords some transportation to this county, but in the main it depends upon the rail lines. Fresno County, which practically has no navigable waterway within its borders, shows an increase in 1890 as compared with 1880 of 22,548 people, or 238 per cent; 9,706 of this increase was in the city of Fresno, the remainder in the country and smaller towns. Tulare County, depending entirely upon the railroad for transportation, shows an increase of 13,293, or 118 per cent, 2,250 being in the town of Tulare, the remainder in the country and smaller towns. Kern County, at the head of the San Joaquin Valley, depends absolutely upon the lines of the Southern Pacific Company for the transportation of its products to the market. This county shows, in 1890 as compared with 1880, an increase in population of 4,207, or 75 per cent; 1,825 of this is in the town of Bakersfield, the remainder in the country and smaller towns.

As will be shown by the testimony of others, the average railroad earnings throughout the State per ton hauled and per passenger carried one mile on the Southern Pacific Company's lines, have been steadily reduced, and railroad construction continued from year to year, both the reduction in rates and the extension of mileage being out of proportion to the increase in volume of traffic offered to be carried. An arbitrary reduction in rates would bring the same results as in Kansas, bankrupt a majority of the roads, and absolutely stop railroad construction, greatly to the detriment of the State.

Many people suppose that Mr. Huntington has only to ask for money to have it freely furnished. Mr. Huntington to my certain knowledge has endeavored to obtain capital for large extensions of roads in this State, which bankers have been unwilling to furnish. They have been

all over the State; they see these conditions which I have attempted briefly to describe; they see the land holdings; they compare the conditions here with the conditions surrounding other States East in which they have loaned money; they observe the differences here, and they do not understand them, and they are cautious and conservative.

Our railroads and their equipment are now well maintained, but many things beneficial to the public remain to be done, such as ballasting more of the track, the substitution of heavier steel rails for the lighter in certain sections as the latter wear out in service; the construction of masonry culverts and bridge foundations; the substitution of iron bridges for wood; new stations and depots; new side tracks; new and improved cars and locomotives; and additional main tracks to convert the roads into double track lines. The money for all these and other improvements, all to the advantage and safety of railway patrons, must come from the earnings; there is no other way for us to obtain it; and we ask of you that you will not, by giving your sanction to the measure presented for your consideration, deprive us of the means to maintain and improve our property to proper and desirable standards. You have been asked by their owners not to kill the little roads. We respectfully submit that the Southern Pacific System in California is made up of lines originally built by 37 independent companies; and, whatever advantage has accrued to the companies by their consolidation and aggregation of their lines into one system, that advantage has been fairly and squarely shared with the public by the furnishing of additional facilities and improved service. Do not, we beg of you, kill either the lines that remain as little roads or those which have, to the mutual advantage of themselves and the public, been combined with each other into a larger system.

BURKE: You speak, Mr. Curtis, of two groups of railways in the East, and their earnings?

MR. CURTIS: Yes, sir.

BURKE: And also their operating expenses; now, will you be kind enough to furnish us with similar information about the Southern Pacific system of consolidated lines you speak of—of the six consolidated lines?

MR. CURTIS: That information, and all that you can desire in this connection, will be furnished by Mr. Lansing, our Secretary and Controller, who has all these things at his fingers' ends. I have the data now in my possession, but it will take too much time, and Mr. Lansing can answer.

BURKE: I would like to ask one other question in relation to your payroll, and the payrolls of these companies you have spoken of. Who do you include in the payroll?

MR. CURTIS: All classes of employés.

BURKE: From the Superintendent down?

MR. CURTIS: Down to the track walkers and section men.

BURKE: Is there a difference in the rate of wages for conductors, engineers, brakemen, firemen, track walkers, and section men, as compared with Eastern men?

MR. CURTIS: Yes, sir. The firemen, for instance—I have before me comparative statements of wages paid on the principal roads in Illinois, and upon the Southern Pacific Company's Pacific System in California. Firemen with us earn an average of \$3 40 per day. In Illinois, the rate is from \$2 01 to \$2 07 per day. You ask about conductors: With

us their average wages are \$4 11 per day; in Illinois it runs, on the Illinois Central and the Atchison System, two prominent roads which I have taken, from \$3 11 to \$3 42, against our \$4 11. These figures are from the Railroad and Warehouse Commissioners' Reports of Illinois, on the one hand, and our people's reports on the other.

You ask about trackmen. Section foremen in the East earn from \$1 48 to \$1 80 per day. Our section foremen earn an average of \$2 74 per day. Other trackmen, that means section hands, or the laborers, in Illinois earn from \$1 16 to \$1 28; while our section men earn \$1 61.

I will place this table, if you desire, with the report filed with the clerk.

EXHIBIT "A."

Comparative Wages Paid on Principal Roads in Illinois and California. Average Compensation per Employé per Day (\$13 Working Days to Year).

Class.	In California.		In Illinois.	
	Southern Pacific Co.	S. F. & N. P. Ry.	Atchison.	Illinois Central.
General officers	\$14 10	\$16 02	\$9 04	\$12 45
Superintendent		10 50		
Attorney		11 02		
Chief Engineer		11 50		
Master Mechanic		6 60		
General office clerks	3 47	3 42	2 59	2 37
Soliciting agents		4 36		
Station agents	2 59	2 48	1 80	1 82
Other station men	2 44	2 16	1 59	1 85
Enginemen	4 32	4 04	3 98	3 74
Firemen	2 40	2 02	2 01	2 07
Conductors	4 11	3 67	3 42	3 11
Other trainmen	2 91	2 29	1 93	2 15
Machinists	3 34	2 88	2 50	2 33
Carpenters	3 15	3 36	2 18	2 21
Other shopmen	2 31	2 67	1 66	1 56
Road master		4 28		
Section foremen	2 74	2 32	1 48	1 80
Other trackmen	1 61	1 76	1 16	1 28
Switchmen, flagmen, and watchmen	2 86	2 33	2 06	2 03
Telegraph operators and dispatchers	3 26	3 26	1 72	1 75
Employés floating equipment	2 77	2 51		2 83
All other employés and laborers	3 59	2 25	2 47	2 05
Storekeeper		3 43		
Average	\$2 59	\$2 68	\$1 66	\$1 98

EXHIBIT "B."

EFFECT ON OPERATIONS OF FIVE IOWA RAILROADS (COMPRISING ABOUT 65 PER CENT OF THE ENTIRE MILEAGE IN THE STATE) IF OBLIGED TO PAY FOR FUEL AND LABOR AT THE RATES PREVAILING IN CALIFORNIA AND ON THE SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM), IN CONNECTION WITH THEIR EXISTING TRAFFIC RATES. (Authority, Railroad Commissioners' Report for Iowa, year ending June 30, 1891.)

Road.	Miles Operated June 30, 1891.	Earnings From Operations.	Operating Expenses.	Labor Expense.		Coal Expense.	
				No. of Men.	Wages.	Tons Used.	Cost.
(Reference)	p. 80ff.	p. 80p.	p. 80m.	p. 80u.	p. 80u.	p. 80gg.	computed.
Burlington, Cedar Rapids, and Northern Railroad	304	\$3,910,479	\$2,293,225	2,748	\$1,352,169	124,242	\$1 50
Chicago, Burlington, and Quincy Railroad	755	6,274,348	4,406,001	2,636	2,158,983	739,048	1 37
Chicago, Milwaukee, and St. Paul Railway	1,553	7,501,489	4,787,673	5,390	3,393,803	275,148	1 95
Chicago and Northwestern Railway	1,163	7,212,720	4,799,673	4,116	2,528,433	340,952	1 75
Chicago, Rock Island, and Pacific Railway	1,066	8,524,427	5,358,454	3,659	2,173,673	541,388	1 89
Totals	5,441	\$32,823,463	\$21,645,028	19,549	\$11,596,966	2,020,778	\$1 66
At Pacific System prices, figures would be: Labor, 6,118,837 days, at \$2 59					15,847,788	Coal, at \$6 40.	12,982,979
Excess expense at Pacific System rate.					\$4,250,822		\$9,577,612
							\$13,828,434
							21,645,028
							\$35,473,462
							\$2,823,463
							\$2,649,969

Total increased operating expense at Pacific System prices for fuel and labor.....\$13,828,434
 Present operating expenses of the five Iowa lines above.....21,645,028

What operating expenses would be at Pacific System prices for fuel and labor.....\$35,473,462
 Present gross earnings of the five Iowa lines above.....\$2,823,463

Operating expenses over earnings at Pacific System fuel and labor prices.....\$2,649,969

EXHIBIT "C."

EFFECT ON OPERATIONS OF TEN ILLINOIS RAILROADS (COMPRISING ABOUT ONE THIRD OF THE ENTIRE MILEAGE IN THE STATE) IF THEY WERE OBLIGED TO PAY FOR FUEL AND LABOR AT THE RATES PREVAILING IN THE STATE OF CALIFORNIA, WITH THE EXISTING TARIFF FOR THE CARRIAGE OF FREIGHT AND PASSENGERS, WHICH NOW PRODUCES TO THESE ROADS AN ANNUAL GROSS EARNING PER MILE OF ROAD OPERATED IN ILLINOIS GREATER THAN THAT EARNED BY THE PACIFIC SYSTEM OF THE SOUTHERN PACIFIC COMPANY. (For authorities, see reports of the State Railroad Commissioners of Illinois and California, for the year 1891).

Road.	Miles Operated June 30, 1891.	Earnings From Operations.	Operating Expenses.	Labor Expense.		Coal Expense.	
				No. of Men.	Wages.	Tons Used.	Per Ton.
(Reference)	p. 23 c. 15	p. 43 c. 16	p. 54 c. 12	p. 65 c. 19	p. 65 c. 20	p. 84-87	p. 87 c. 29
Chicago, San Francisco, and California Ry.	234.73	\$3,012,691	\$10,219	1,770	\$921,549	142,612	computed
Chicago and Alton Railroad	586.06	5,638,658	9,621	3,086	2,010,399	192,817	\$1 74
Chicago and Eastern Illinois Railway	202.55	2,186,216	10,793	1,465	907,655	73,262	1 75
Chicago and Grand Trunk Railway	30.65	431,093	14,065	261	160,530	17,799	96
Chicago, St. Paul, and Kansas City Railway	172.16	1,383,747	8,037	554	381,365	61,056	35,598
Chicago, Rock Island, and Pacific Railway	236.18	4,329,418	18,331	3,457	2,255,503	139,346	103,795
Cleveland, Cincinnati, Chicago, and St. Louis Ry.	482.75	3,940,331	8,068	3,418	1,815,104	163,258	250,826
Illinois Central Railroad Company	1,253.28	9,692,696	7,562	8,158	5,066,091	467,143	176,319
Terre Haute and Indiana Railroad	158.34	1,773,333	11,199	1,203	646,923	65,831	467,143
Wisconsin Central Railroad Company	56.56	891,864	15,768	202	131,845	17,982	72,414
Totals	3,505.32	\$33,280,047	\$9,494	23,574	\$14,296,964	1,341,106	42,977
							\$1,803,978
							\$1 34

Summary.

Day's labor in Illinois, based on 313 days per year, 7,378,662. Average wages per day, Illinois roads, \$1 93; Pacific System, \$2 59. Additional expense at Pacific System rate of wages to Illinois roads.....\$4,867,277
 Price coal per ton, Illinois roads, \$1 34; Pacific System in California, \$6 40. Additional expense at Pacific System coal price to Illinois roads.....6,780,936
 Present operating expenses of above Illinois roads.....22,112,131
 Operating expenses of Illinois roads at California fuel and labor prices.....\$33,760,394
 Present gross earnings of Illinois roads.....33,280,047
 Operating expenses over gross earnings at California fuel and labor prices.....\$480,347

STATEMENT OF RICHARD GRAY.

(General Traffic Manager of the Southern Pacific Company.)

The distinguished Senator who introduced the bill now before your honorable committee, which was framed by the San Francisco Traffic Association, on further consideration withdrew his proposition for 2 cents per mile as maximum passenger fares, stating that he had been informed that 3 cents per mile was the rate charged by a large number of the principal roads in the United States, and was therefore willing that 3 cents be fixed as the maximum.

It has been shown that the Act of the Legislature under which the Nevada County Narrow Gauge road was organized allows a charge of 10 cents per mile for passengers, and 20 cents per ton per mile for freight.

So anxious was the community to secure this road, that the Legislature agreed not to interfere with its rates until after it had been shown that the road earned more than 12 per cent per annum on the investment.

If 10 cents per mile is considered reasonable for the line from Colfax to Nevada City, which, while having steep grades, is practically below the snow line, surely 5 cents per mile is reasonable for the line from Auburn to Truckee, with its heavy grades, numerous tunnels, and continuous snow galleries for thirty-eight miles.

If 3 cents per mile be reasonable and the average fare charged, as we were told, on the great railroads of the Western States, connecting large centers of population in such States as Illinois, Iowa, and Nebraska, will any one contend that 5 cents per mile is extravagant on the Colorado Desert, between Banning and Yuma, where the road is subject to periodical inundations from the Colorado River, numerous cloudbursts, which make it very difficult to maintain a roadbed, and where there is no local traffic of any kind, and which, for all business purposes, might as well be a bridge or a tunnel?

If three cents per mile be reasonable and the customary charge between centers of population in Eastern States, will any one contend that 4 cents per mile is an extravagant rate between Redding and the Oregon boundary, through the tortuous Sacramento River Cañon, and over the Siskiyou range of mountains, with maximum grades of one hundred and seventy-four feet to the mile? Or that 4 cents per mile is unreasonable between Bakersfield and Saugus, over the Tehachapi range of mountains, and the Mojave Desert?

I think you will admit, gentlemen, that different circumstances and conditions prevail in this State from other States; that variety and not uniformity is the rule, and particularly is this the case with railroads, in their operations as well as their construction; that the proposed uniform rate per mile, regardless of character of road, would be unjust in the extreme to mountain roads and roads in desert or thinly settled districts.

Since coming before your honorable committee, the framers of this bill have learned that 2 cents per mile, as originally proposed, was unreasonable, and have admitted this fact. Would it not be well for them to again investigate, when they will doubtless find that 3 cents, which is the maximum charge on the Southern Pacific lines through the great valleys of the State, is also an unreasonable rate to apply to mountain and desert districts of California; that such a rate

adopted as the maximum would be unjust, and sure to cripple small roads and branch lines now in existence, while effectually preventing the building of new roads in the future?

In view of the evidence already presented on the subject, I think it would be insulting the intelligence of this committee to dilate further on this point. The facts as to our passenger rates, to which we invite the investigation and criticism of all fair-minded men, speak for themselves.

The Manager of the San Francisco Traffic Association, in his hearing before this committee on the evening of January 23d, argued in favor of a constitutional amendment embodying a distance tariff and classification to apply on freight, which he would have put in force on the railroads of this State.

Mr. Leeds has repeatedly compared our rates with those in force in Kansas, which seems to be his favorite State; but I notice that in constructing a distance tariff which he would have adopted for California, he does not use the official Kansas Distance Tariff, but rates very much lower. We have not had time since receipt of copies of this bill to apply the new tariff to our business, or judge accurately of its effects thereon. But I can assure your committee that the rates proposed would be disastrous in the extreme.

It is proposed to ingraft in the Constitution of the State, to govern this tariff, a classification which is made by Eastern people to apply on Eastern roads, whose conditions and circumstances differ widely from those in California.

The proposed rates can be shown to be lower than those now used on any road on the Pacific Coast, or on any road similarly situated as to grades, cost of construction, or any of the elements which enter into the expense of maintenance and repairs.

The Manager of the Traffic Association has made certain statements which have been, or will be answered by other officers of the company; but there is one statement or allusion which has been reiterated in certain San Francisco newspapers to which I will refer, which I think was altogether uncalled for. He, Mr. Leeds, reminds your honorable committee you are considering rates, which, as he understands them, apply to roads which are within the limits of California alone; that it has been insisted that the Pacific System of the Southern Pacific Company should be considered as a whole, including Arizona, Oregon, and other States. He tells you the Supreme Court of the United States has held that each State is an integral part by itself, and as such the State has power to fix rates on all State business; that you must not call on California to support a business in other States or Territories.

These strictures are altogether unnecessary, because, while it might justly do so, the Southern Pacific Company has never asked California to support roads in another State or Territory. Facts indicate the reverse. Our printed annual reports will prove that our lines through Nevada, Utah, Arizona, and New Mexico, are self-sustaining. On the other hand, our lines in the States and Territories referred to, are feeders of the California line, bringing to it business which it would not otherwise receive, and but for which it would not be able to operate as economically for, or furnish as good train facilities to, the citizens of this State.

Were the California roads not connected with the East, their earning power would be very much diminished, as can be readily shown to any

one who will take the trouble to look into the matter. A little thought on the subject will readily convince any investigator that the States are interdependent—that no State is, as Mr. Leeds puts it, “an integral part by itself,” or can afford to be so—least of all, California. Up to the close of 1869, California might be called an integer, because it had no direct communication with the rest of the country; but was it happy or prosperous in that condition? We know it was not. But California now has railroads, and the principal of these is on trial. We are told that it has oppressed and is oppressing the citizens of the State, who are now seeking relief. Let us see. The old adage is a true one: “By their fruits ye shall know them.”

The Manager of the San Francisco Traffic Association has repeatedly stated that he looks with suspicion on railroad figures; that his experience leads him to be dubious of them; but I do not think he can accuse the United States Census of being partial, or made up to favor any particular interest. It may therefore be well to make a few comparisons from the Census by way of illustration:

California had in 1870, the first year in which the overland railroad was in operation, real estate valued at \$169,536,546; with a population of 560,000; that being \$303 per capita.

This was her population and development after twenty years of Statehood, including a gold excitement and production such as the world has never seen.

In 1880, with mining values steadily decreasing, the valuation of real estate had increased to \$491,885,079; and her population to 864,000; being \$569 per capita.

An increase of \$322,348,533 in ten years, or nearly three times.

In 1890, her real estate was valued at \$930,822,650; her population had increased to 1,208,000; being \$770 per capita.

Being an increase of over \$761,000,000, or \$467 per capita, or nearly five times in twenty years.

Now let us glance at Kansas, with which State we have been frequently compared for several months past:

Census Bulletin No. 104, issued August 22, 1891, gives valuation for 1890 of Kansas, including personal property, as \$290,593,711; being \$203 68 per capita; while the valuation of California, including personal property, was \$1,071,102,327, or \$886 per capita.

Thus the wealth of the people of California is 4.36 times as great per capita as the people of the State with which Mr. Leeds would compare us.

The total valuation of Kansas in 1880 was \$160,891,000; which in 1890 had increased to \$290,293,000; or an increase of \$129,402,000.

With which compare California in 1880, \$584,578,000; and in 1890, \$1,071,102,000; or an increase of \$486,524,000.

The Census of 1890 shows Kansas had 9,000 miles of railroad within her borders, while California had but 4,336 miles, or less than half as much; but we find in twenty years, the enormous sum of \$761,000,000 added to the taxable value of real estate in California, not to mention an increase of over \$60,000,000 in her personal property, all of which I maintain is directly traceable to the construction and operation of railroads, which give her communication and direct connection with 65,000,000 people on the eastern side of the continent.

To one not familiar with the facts, or hearing them for the first time,

this may sound like a startling claim; but we need only refer to the recently published reports of the California State Board of Trade to prove the truth of our assertion. Since the decadence of gold mining and previous to the construction of transcontinental roads, and the development brought about thereby, California was essentially a pastoral and wheat-growing State; her average yield of wheat ranging from fifteen to twenty million centsals, most of which, as at present, reached tidewater on the bay of San Francisco.

General N. P. Chipman, in his address before the State Horticultural Convention, at San José, November 15, 1892, states that in the year 1890, the value of fruit and fruit products exceeded by over half a million dollars, the value of wheat and flour exported within the year. In 1880 he says the export of fruit may be said to have commenced, and yet, “in ten years, we added twenty million dollars annually to the wealth of this State, without diminishing the possibilities of wheat growing by so much as a bushel.” Still quoting from the same report, we find that in 1891, a comparatively small acreage in Southern California received \$1,796,000 for oranges alone, and this will be very largely increased the present year. Riverside, he says, shipped fifteen carloads in the winter of 1880–81, and in 1889–90 shipped one thousand five hundred carloads. And I would say right here, while not abating a jot from the debt we owe our Santa Fe friends, it should be borne in mind that the Santa Fe was not completed to San Bernardino until 1886, and did not have its own line into Los Angeles until June, 1887; therefore, the wonderful development about which we have been talking was due to the Central Pacific and Southern Pacific, who created it and fostered it. In 1870 shipments of deciduous fruits, mainly from the central portion of the State, were only about four million pounds. In 1880 these were quadrupled, being sixteen million pounds. This latter in 1891 was increased over five times, aggregating eighty-three million pounds; while in 1892, shipments exceeded one hundred million pounds. Still quoting the same report, we find in 1880, Fresno County had less than ten thousand population; in 1890 it was over thirty-two thousand. Fresno is the center of the raisin industry, which previous to 1873, may be said to have had no existence. In 1880 her shipments were less than two million pounds, and in 1891 had increased to over twenty-seven million pounds. What is said of Fresno County, may be said of Santa Clara, Kern, Butte, Tehama, and other counties, as well as Los Angeles and San Bernardino.

It is needless to say that this wonderful development of our fruit culture would have been impossible without the overland roads, as well as the local system within the State. Without cheap and rapid transportation, the business would not have been possible, and the State could not have attained anything like her present degree of prosperity, to say nothing of the great and brilliant future which awaits her.

But, it may be suggested, it is not through, but local rates, which are under consideration. My answer is, the revenue from starting point to State line is a local earning, and this charge is, on all the staple products of California, the lowest rail transportation in the world.

Even under rates established by the defunct Transcontinental Association, that great bugbear of the San Francisco Traffic Association, rates on the principal products of California, which while intrinsically much more valuable than wheat, were, to enable them to reach the

great centers of population at the East, transported at rates which were lower per mile than rates on wheat from points in the Dakotas and other Western States to Milwaukee or Chicago.

I maintain it makes no material difference to the farmer or consumer what rates he is asked to pay from San Francisco to the interior on his tobacco, tea, whisky, and other luxuries; that it makes no difference whether these articles are jobbed by a merchant living in San Francisco, Los Angeles, Sacramento, or elsewhere, so long as the rates on staple products of his orchard and vineyard are low enough to enable him to compete with and lay his fruit down in competition with similar products of the Eastern States and of Europe.

What is true of green fruit is also true of raisins, canned fruit, and other commodities, which it is possible to ship by water, but which, to be profitably marketed, must reach promptly and in good season all the great cities East, South, and West, in much shorter time than they could be transported by the most rapid water communication.

That the State has prospered since the advent of the transcontinental railroad, the above figures, showing \$761,000,000 increase in land values, proves beyond question. Railroad construction in some parts of the State has kept pace with, as well as promoted, this development. Will any fair-minded man demand that the instruments of all this prosperity shall not have a fair share of the same?

There are yet several counties of this State, notably Lake and Humboldt, anxiously crying out for railroads, and demanding railroad connection with the rest of the State. Any one visiting the fair now in progress in San Francisco, will find the Humboldt County exhibit, which is one of the most interesting in the Pavilion, displaying sundried prunes and other valuable products. He will also find a sign conspicuously displayed reading as follows:

"Humboldt has one hundred and twenty miles of railroad, and yet there is not enterprise enough in the State of California to give this great county railroad communication with the outside world."

I will call the attention of Mr. Leeds and the Traffic Association of San Francisco to this sign. It is a standing reproach to them.

It is safe to assume that within a year from the construction of a railroad into Lake and Humboldt, the taxable value of land in those counties would have increased at least 100 per cent. But what is this "Traffic Association?" Let us look into it a little.

I maintain it is not, as its title would indicate, a traffic association of "California." I have it on the authority of a gentleman who helped to organize it, that ninety-eight per cent of its members reside in San Francisco; the other two per cent consists of citizens of other parts of the State, whose names were put on for effect, who take no interest in its proceedings, and contribute nothing to its revenues.

These San Francisco merchants, during a period of dull trade, and looking around for some means of bettering the situation, imported from the East a gentleman whose name came before the country in connection with the Transcontinental Association, and they put him in charge of their association. This gentleman immediately, from his office in San Francisco, began to "reform" matters, and in one of his public speeches at a dinner of the Chamber of Commerce, announced what he no doubt in his freshness candidly believed, that the State was languishing under what he was pleased to term "Your one Railroad."

I am glad my friend Leeds has come to Sacramento, because he has certainly learned since coming that instead of one railroad, there are more than thirty railroads in the State. He has learned something of the greatness of California; that there are mountain roads as well as valley roads; that there are circumstances under which one road may live and earn fair interest on its investment, while other roads languish and starve; that no uniform distance tariff can be just or reasonable, as applying to all roads in this State; and what is true of *all* roads, must be true of roads forming parts of a system of roads; that while his favorite State of Kansas has nine thousand miles of railroad, much of which is bankrupt, California has as yet but half that mileage, though with double the area. He has learned, I hope, that the crying need of California is "more railroads;" that railroads have been the cause of her present prosperity and are indispensable to her further development; that, if instead of pulling down and trying to cripple railroads now existing in the State, which have done so much for the State, the San Francisco Traffic Association would inaugurate and encourage railroads to Humboldt, to Lake, to Del Norte, to Lassen, to Modoc, and to other counties holding out their hands and seeking railroad communication, they would accomplish far more for the State and for San Francisco than by any amount of rancor and defamation of the men who have invested their own capital and that which they have been able to borrow, for the building of railroads and development of the country.

But I maintain this complaint of the city which has had a portion of its trade curtailed by natural causes, and by the building of competing lines of railroads to the north of us and on the south, is not an index to the true situation, but is a libel on the State, which, if allowed to pass unchallenged, may do it serious injury.

My duties require me to make frequent visits to the Eastern States, and I can say from personal observation that California is to-day the most prosperous State in the Union, and her development is, and has been, steadier, her wealth greater, her happiness and prosperity better assured than any other State; and if our San Francisco friends would devote some of the two hundred million dollars lying idle in her banks, or loaned only at low rates of interest on city real estate, for the development of railroad, irrigation, and kindred enterprises, we would have such a season of prosperity as would leave in the shade the famous "boom" in the southern counties. San Francisco would see her trade revive, and would be too busy attending to her legitimate business to send a Traffic Manager to Sacramento with a proposition to insert in our organic law a scheme of rates and classification which, to put it mildly, is absurd and ridiculous, and which even the distinguished Senator who presented it, apologizes for as an "innovation."

This enormous increase of \$761,000,000, a sum nearly three times the total wealth of Kansas, speaks louder than any words of mine. It places the burden of proof on those who, in their ignorance and short-sightedness, defame and belittle our fair State.

I respectfully submit, no evidence has been produced to show affirmatively why there is any necessity for reducing or in any way changing the existing railway rates of this State. No representative of any industry has appeared before you to complain, or produced any evidence tending to show that the railroads of this State have not in the

past occupied, and are not now occupying, their true and proper place in the industrial development of the Commonwealth; that they are not now doing all that the State has power to compel; that the growth of California, the development of its agricultural, mineral, or industrial resources are being in any manner restricted or impeded by acts of transportation companies.

No representative of any industrial interest has appeared before you to make a showing of this character, for the simple reason that no good cause for complaint against the rates or methods of the railroads exists.

On the contrary, it is true that the railroads are doing all in their power to make the State great and prosperous. It is to their interest that this should be done. If in their power to exact rates, the enforcement of which would result in distress and poverty to communities along the lines, no one interest would feel the harmful effects more quickly or forcibly than the railroads themselves. The business interests of a railroad company are best promoted by prosperity in every branch of industry which in any way employs transportation; and it is a fact, so far as the influence of railroad companies can contribute to this end, the State to-day is prosperous, and no arbitrary reduction in the average rates now charged for the transportation of freight or passengers should be made.

EARL: I notice the accredited agent of the San Francisco Traffic Association, Colonel Barry, is present. Colonel Barry, would you like to make any statement to the committee?

MR. BARRY: Mr. Chairman, I think, although I can hardly say I replace Mr. Leeds—it is absolutely necessary for other matters of great importance to that association, that Mr. Leeds should depart from the State of California, and he left to-day, and I am therefore, although not entirely fitted for the task, substituted for him before this committee in so far as the Traffic Association is interested in this matter, and in so far as that interest should be represented here.

We introduced this measure. Senator Gesford made an opening statement which outlined the character of this bill. Mr. Leeds has given certain testimony, I believe. In so far as we have acted at all, we have laid our case before you. I think it is only fair, instead of making any statement this evening, that after these gentlemen, representatives of the various roads, have made their statements, that the Traffic Association shall receive that courtesy from this committee.

Possibly, as we have introduced this measure and have made our statement in full, we might be permitted to reply, and for that reason I do not desire to say anything this evening, but I shall beg of the committee at some future time the opportunity of either replying or submitting an argument to the committee in reference to what has been said by the representatives of the various railroads.

It seems to me that thus far this measure is on trial. These gentlemen come here with statements and arguments, and it seems it would interfere with the logical consideration of the subject if anything I should say, or any representative of the Traffic Association, should be interjected at this time, and it would be better that all that can be said against the measure, either as to its general scope or plan, or as to its details, be said, so that we may make a comprehensive reply, and therefore, Mr. Chairman, if agreeable to the committee, I should prefer not

to say anything, but wait until the closing case is presented against the measure.

EARL: Certainly; the opportunity will be given to all to be heard, and we will be glad to hear from you, Colonel, at any stage of the hearing—at any time during the hearing.

MR. BARRY: I shall say here, Mr. Chairman, that I shall be present here at all of the meetings hereafter, and shall give that attention to the arguments of the gentlemen that their importance demands, and then I shall ask a hearing.

STATEMENT OF C. F. SMURR.

(General Freight Agent Southern Pacific Company.)

Regarding the proposed constitutional amendment now under consideration by your honorable body, I would say:

As the documents thus far introduced read, it is clearly the intention that in the absence of legislation, the Constitution shall provide specifically what classification shall be employed, to wit: the Western Classification; and what table of rates shall be employed as a maximum, to wit: that set forth therein as the California Distance Tariff; thus wiping out all existing classifications, rate-sheets and rates, and that from date of adoption, or thereafter as may be provided, all property must be transported under classes, as set forth in said Western Classification, and at rates not exceeding those set forth in said "California Distance Tariff."

Practically speaking, given a railroad within the State of California, its fixed expenses known, its operating expenses approximately known, although there are many disturbing factors that make this feature a constantly variable one, leading among which is climatic conditions, disasters incident to fire, snow, and flood, and in addition, given the volume of traffic, direction of movement, its character or description, length and direction of haul, freedom from competition of markets and freedom of competition of carriers, it would not be a difficult matter to devise a freight tariff to be applied thereto that would be sufficient to meet the fixed and operating expenses of such road.

On the other hand, given a railroad within the State of California, its fixed expenses unknown, its operating expenses only approximately known, and subject to the variable conditions before named, its traffic wholly unknown or undeveloped, competition of markets and carriers existing in active degree, and the proposition of making freight tariffs is no longer to be regarded as simple and one easy of solution. This latter condition is what has prevailed from date of the completion of each and every railroad within the State, and the tariffs, as applied to-day, are the outgrowth of the experience of a quarter of a century or more; and the idea that any single individual, without local knowledge and exact information, within slightly more than a twelvemonth, can proceed to evolve one uniform distance tariff that will meet the variety of commercial conditions existing within this State, and that will do justice to the people as well as the carriers, is in my humble judgment, to say the least, ludicrous presumption.

In practical working we are called on to consider the question of making changes in or establishing new rates daily, and necessarily

must have due regard for bulk, likelihood to damage (for the rail carriers are insurers), value, volume of traffic, direction of movement, length of haul, return empty haul, competition of markets, competition of carriers, and cost of service. The propositions requiring such consideration come to us from the commercial communities served, and as a rule may be regarded, and are, in the public interest; and it may be said, we believe, with propriety, that whensoever it can be demonstrated that a modification of rates is necessary to development in a general or specific way—that such modification will bring about improved results—the emergency is met; the aim in general being that, on the whole, rates shall be such as to bring about the maximum development of production in all its different forms, and at the same time bring enough revenue to enable continuance of the service of the roads already established, and encouragement in direction of construction of new roads, and the consequent development resulting therefrom.

Touching the assertion made by the Traffic Association of San Francisco's representative at your first meeting, in effect, that an inflexible classification as a part of the Constitution or statutes of the State of California, by reason of inability to make changes therein save once in two years, would work no hardship on the commercial community, and assigning as one of the reasons therefor that the local classification of the Southern Pacific Company had not been changed "within the past two years or within the past ten years"—I am compelled to characterize said assertion as being, to say the least, extremely reckless. Had the Traffic Association of San Francisco, through its representative, wished to present the facts to you, it could have obtained them from the files of the State Board of Railroad Commissioners, where the various changes as made within the past one year, two years, or ten years are to be found. The fact is, there were numerous changes made in the local classification, as used by the Southern Pacific Company on its Central California traffic, during the year 1892—forty-five in number. During the same period commercial necessities required changes in the Western Classification, aggregating 265 in number. When you take into consideration the vast area over which the Western Classification is in operation, to wit, practically all the territory west, say, of the Chicago meridian, you will at once see that relatively there have been more changes in the Southern Pacific Company's local classification than in the Western, which is set up as the inflexible standard, and which it is proposed to adopt, regardless of commercial requirements.

Again, for the term January 1, 1883, to January 1, 1893, ten years, as referred to by the Traffic Association's representative, the local classification of the Southern Pacific Company has been changed as follows: Additions to, 365; removals from, 59; modifications of the current classification, 254; total changes, 678. These general changes, and, in addition, thousands of individual commodity changes from and to given points, have been made necessary within the period named, and because of the ever-changing commercial and competitive conditions.

One word more with respect to the proposed rigid Constitution classification: The document referred to in the resolution indicates rating as follows: Coke, carloads—coke tariff rates. Ore, n. o. s., released to valuation not exceeding \$100 per ton—special ore tariff rates.

Query: Which one of the differing coke and ore tariffs, as in use by each of the seventy-four railroads that have adopted and use the West-

ern Classification, will, under this proposed Act, become a part of the Constitution of California?

It may not be amiss to present for your information a brief history of the document known as the Western Classification, first called Joint Western Classification, and issued April 16, 1883, and used thereafter by the following railroads:

Atchison, Topeka, and Santa Fe Railroad.
Burlington and Missouri River Railroad.
Central Iowa Railway.
Chicago and Alton Railroad.
Chicago, Burlington, and Quincy Railroad.
Chicago, Milwaukee, and St. Paul Railway.
Chicago, Rock Island, and Pacific Railway.
Chicago and Northwestern Railway.
Chicago, St. Paul, Minneapolis, and Omaha Railway.
Denver and Rio Grande Railway.
Des Moines and Fort Dodge Railroad.
Illinois Central Railroad.
Kansas City, Fort Scott, and Gulf Railroad.
Missouri Pacific Railway.
Minneapolis and St. Louis Railway.
Sioux City and Pacific Railroad.
Union Pacific Railway.
Wabash Railroad.

It was a classification of articles carried by the roads named, and was added to from time to time as the necessities developed, and its adaptation to the freight traffic of the particular territory served by the roads named was a comparatively easy matter. April 1, 1887, the name was changed from Joint Western Classification to Western Classification, and the work of adding thereto, or taking from, or making changes in, as necessities developed, proceeded in the usual course. About the same time, to wit: April 5, 1887, the Interstate Commerce law became effective. Then the document was in such wide range of use that it was deemed advisable to utilize it as the fundamental or foundation principle of rate making on transcontinental interstate traffic. A schedule or table of class rates applying to and from the Pacific Coast and what is known as Atlantic seaboard territory, Buffalo-Pittsburg territory, Detroit-Cincinnati territory, Chicago territory, Mississippi River territory, and Missouri River territory, was finally arranged for and published, the Western Classification applying thereto, and it has continued in use as the foundation of freight rates on transcontinental traffic up to this time.

It was apparent from the start, however, that it could not be relied on exclusively to meet the requirements of commerce. As a consequence, the roads engaged in transcontinental traffic issued commodity rates, which aggregate to-day on west-bound business some 1,329 in number, and on east-bound business some 332 in number. From this you will perceive that the Western Classification, with its table of rates, comes far from being a perfect document, and such a one as to meet all the requirements of commerce. The same conditions with respect to necessity for commodity tariffs that prevailed on transcontinental traffic, prevails in practically all territory where the Western Classification is now in use. As it was extended westward to—Colorado, for example—

the leading industries there were so different from those of Iowa and Illinois that it could only be partially utilized, and naturally a large number of commodity rates were necessitated. And this same experience has been found wherever it has been put into effect—Utah, Montana, Washington; the varying conditions of production, consumption, etc.—more especially the former—necessitating radical departures from the Western Classification and its table of class rates. The consequent tendency throughout the country to-day is, instead of restraint and rigidity of classification, in the direction of flexibility of classification.

Regarding the statement made by the Traffic Association of San Francisco, through its representative, that the Southern Pacific does to-day apply the Western Classification on certain portions of its California traffic, I have to say that this is technically correct. When the Santa Fe System built into Southern California, it brought with it the Western Classification, tariffs, rules, and conditions that governed its business elsewhere, and it adopted the Southern Pacific Company's schedule of the merchandise and numerous commodity rates without material change or reduction therein. Instead of graduating its merchandise to first, second, third, and fourth-class rates, the same rate, as a rule, was used by it for each of the four classes—the result of this adjustment of tariff to the Western Classification in Southern California being to practically produce the same revenue as would result from what is known as the local classification and merchandise rates of the Southern Pacific Company; or, to make it clear to you, in practical operation the use of the Western Classification, when applied to the schedule of rates as above described, is in no material features different from the local classification that was in use in Southern California, and is now in use in Central California.

The theory of the local classification of the Southern Pacific Company being to simplify in fullest degree, consequently it starts out with the announcement, in effect, that all articles not named specifically therein will be charged for at merchandise rates—then proceeds to indicate the exceptions, enumerating articles that are light, bulky, of excessive value, liable to damage, inflammable, or hazardous in any measure, and provides higher ratings, ranging from one and a half to double first class thereon—the same in principle, in this regard, as the Western Classification. It also enumerates various staple articles on which carload rates are made—similar in principle to the Western Classification. The chief difference between the local classification of the Southern Pacific Company referred to and the Western Classification, is that the Western undertakes to enumerate practically each and every article known to trade that is transported by rail and other carriers. This makes of said Western Classification a very voluminous document. Of course you appreciate that the classification, no matter whether it be the local classification of the Southern Pacific Company or the Western Classification, or any other classification, does not within itself make the tariff; it is simply the key to the tariff; or it is the index to the charge that should be made, said charge represented by the rate corresponding to the class named and found in the table of rates. The classes are: On less than carloads, first, second, third, and fourth; on carloads, fifth, A, B, C, D, and E. You will perceive that if all less than carload quantities of each and every article named in the Western Classification takes either first, second, third, or fourth class, and the same rate is used for each of

these four classes, that it is equivalent to a rate made by using the Southern Pacific Company's local classification, wherein, as before stated, it is set forth that all articles not named specifically therein will be charged for at merchandise rates.

The Western Classification is also used in conjunction with a table of graduated class rates between Central California points, San Francisco, for example, and Southern California points. This has been the principle of making rates to and from that territory since completion of the rail lines joining the two communities. Originally, however, the classification as applied to the graduated table of class rates was one devised and adopted by the Southern Pacific Company of its own motion, adopted with the intention of enabling San Francisco to compete by rail in that territory as against the water carriers. When later the Western Classification became prominent, it was deemed expedient to apply it to the table of graduated rates that had been in force for a term of years to and from the territory mentioned, the particular desire being to place San Francisco merchants in position to enter that territory in competition with merchants of other commercial centers that were using a similar classification.

It may be proper to say here that as a classification, in the ordinary acceptance of the term, not as a constitutional or statutory provision, making it a rigid or inflexible instrument, the Southern Pacific Company has no material objection thereto, and is not averse to its application where it can be made without such loss in revenue as will embarrass or make it impracticable to continue operating the various railroads in the State of California now under its control.

The State of California embraces about 156,000 square miles. Of this, 25 per cent (or 39,000 square miles) is valley and foothill, 22½ per cent desert, 52½ per cent mountains. The State of Kansas embraces about 81,700 square miles, the whole of which is practically a level and productive country. The people of the State of California have within its boundaries, radiating from San Francisco, say 900 miles of navigable inland waters, over which established steamer and sail lines are now operating, and the whole of its coast line, from Oregon to Mexico, approximately 700 miles of ocean front, where they have like competitive advantages. The railroads operated by the Southern Pacific Company compete with the waterways above described in greater or less degree throughout the whole of the State, and directly at all the principal towns about the bay of San Francisco; with the numerous navigable inlets and sloughs, on the Sacramento and San Joaquin Rivers; with the Pacific Ocean at Santa Cruz and Monterey Bays, Santa Barbara, Ventura, and Santa Monica and San Pedro Bays. In other words, water competition affects in greater or less degree practically every rate made by the Southern Pacific Company's roads within the State of California to-day. This, coupled with the fact that a large portion of the State's area is mountainous, desert, non-productive, costly of operation, should bring conviction to the minds of your honorable committee of the impracticability of introducing and applying the California Distance Tariff, or any other uniform distance tariff, whether it be subject to the Western Classification or any other classification.

For example: The distance by the shortest operated rail line from Napa to San Francisco is seventy miles. California wine in wood, carloads, per Western Classification, takes second class. The proposed Cal-

ifornia Distance Tariff makes second-class rate for seventy miles 25 cents per 100 pounds as maximum that could be charged. In fact, the Southern Pacific Company, forced by the water competition from Napa to San Francisco, charges on this commodity to-day but 5 cents per 100 pounds, which produces but a trifle, may be one mill per ton per mile, above the actual cost of the service; but the business is taken in the face of the cheapest known mode of carriage, and is regarded as desirable because of its ability to contribute that one solitary mill toward meeting the other or commonly called fixed expenses incident to the conduct of transportation, and to that degree it lightens the burden or reduces the charge that must necessarily be imposed on all the remaining traffic. Under the terms of the proposed amendment, the Southern Pacific Company could not make effective a commodity or independent rating on any article that is classified in the Western Classification.

The only method would be to reduce the class rate in cases where it is found necessary in order to meet competition or any peculiarity of condition that might control. Should the Southern Pacific Company desire to continue in the business, and, having been compelled by influences beyond its control to establish this as its second-class rate for the seventy miles from Napa to San Francisco, it thus fixes 5 cents per one hundred pounds as second-class rate for any given seventy miles between any two given points within the State of California on any commodity the Western Classification names, and there are several, as taking second-class rate. Having established this as the rate for seventy miles, you will at once perceive that for seventy-five miles distance, preserving the same differential as the California Distance Tariff observes, the second-class rate would be 6 cents, as against California Distance Tariff provision of 26 cents; for eighty miles it would be 8 cents, as against California Distance Tariff provision of 28 cents; for one hundred miles, it would be 16 cents, as against California Distance Tariff provision of 36 cents. The injustice of such requirement you will at once appreciate, and that its effect will be to remove the Southern Pacific Company's roads as competitors with water or other rival carriers, for this very essential reason: that it cannot continue in business as a common carrier and base its rates throughout the whole State of California on the extreme competitive conditions that exist between Napa and San Francisco; and its withdrawal from the field means an advance in the rates of its water-carrying competitors, just as surely as the tides rise and fall. There are scores of instances where similar conditions prevail, and where just such results as outlined in the Napa wine rate would follow the adoption of a rigid classification and the California or any other distance tariff.

In the State of Kansas, where the adverse physical conditions existing in the State of California do not have existence, where the country is practically level, no inland waterways worthy of the name of competitor, no coast line, no mountain ranges or deserts to traverse—even there, and without a rigid classification being imposed, a uniform distance tariff does not meet the requirements. The Santa Fe, as well as other roads in Kansas, have in addition to the distance tariff numerous special tariffs and commodity tariffs and rates issued from time to time to meet the commercial requirements of the various communities they serve. In fact, however, as has been presented, it is not intended that California, with its unfavorable physical conditions as compared with

Kansas, is to have as its maximum rates the Kansas Distance Tariff, but it is proposed that it shall have as its maximum rates a distance tariff as compiled by the Traffic Association of San Francisco, and which is lower than the Kansas Distance Tariff in the following degree:

	Per Cent.		Per Cent.
First class	20	Class A	10
Second class	27	Class B	12
Third class	25	Class C	10
Fourth class	28	Class D	25
Fifth class	31	Class E	16

The representative of San Francisco's Traffic Association has seen fit to mention particularly the California Pacific Railroad, commenting on its earnings, with evident intent of creating in your minds, that by reason of said earnings undue or excessive rates are imposed. The facts are that no railroad in California or any State in the Union has more active competition, and that by the very cheapest known carrier, than has the California Pacific. This road, as you know, parallels the Sacramento River and the upper bays; reaches from Knights Landing to South Vallejo, with branches, one from Napa Junction to Calistoga, and from Davisville to Sacramento, every foot of which is in direct competition with water, save north of Napa, and that, too, in only slightly modified degree. Three regular steamer lines are plying on the Sacramento River, besides outside steamers, and in addition sailing craft that reach Suisun, Cordelia, South Vallejo, and Napa. With this unsurpassed competitive condition as the controlling factor in the regulation of rates, it is simply an impossibility for the Southern Pacific Company to impose rates that can reasonably be regarded as excessive or exorbitant, and its patrons can for all time rest easy in their enjoyment of the very lowest minimum rates consistent with operation and maintenance of the property.

The explanation of the earnings referred to lies in the fact that the territory served by the California Pacific Railroad, the Sacramento River, and the upper bays, is exceedingly fertile and productive, and the further fact that the California Pacific Railroad is, in practical operation, the stem of that portion of the railway system radiating from San Francisco Bay northward and eastward—in other words, the small end of a funnel through which the larger proportion of the traffic of the system of railroads operated by it in California, and adjoining States and Territories, flows. Further, with respect to the mention made of the earnings of the South Pacific Coast Railway, the evident intention being to create in your minds that by reason of said earnings undue or excessive charges are imposed, I desire to say that the same class of competition exists. This road parallels San Francisco Bay from San Francisco to San José, and its southern terminus is on Santa Cruz Harbor, where it meets water craft, both steam and sail, and being so situated that the controlling factor, to wit: water, or the cheapest known method of carriage, makes its rates, I may with propriety again urge that excessive or undue charge for services rendered is beyond the possibilities.

Reference has been made by the Traffic Association of San Francisco, through its representative, to a 15 cents per ton per mile maximum rate as being in use by the Southern Pacific Company. The facts are, there was a statute that did so permit, and the same was in full force prior to the new Constitution, which became effective January 1, 1890. Since

then there has been no maximum provided by law, other than as might be made by the State Board of Railroad Commissioners, and it is a fact that the average rate charged by the roads operated by the Southern Pacific Company in the State of California on their local traffic to-day is less than 2½ cents per ton per mile, and that their average pro rata earning on through traffic is less than one half that earned on their local traffic—the reduced earning on the through traffic being attributable to the absolute necessity of providing abnormally low rates in order to enable the marketing of the products of California in the thickly populated States which are found two thousand miles and farther distant.

With these figures, then, as indicating the average rate necessary in order to meet the fixed and operating expenses of the roads operated by the Southern Pacific Company, you will at once appreciate the embarrassment that would result from the adoption of the proposed California Distance Tariff as a maximum provision governing every class and every distance, it being self-evident, given an average rate necessary to earn, that the higher the maximum the lower may be the minimum; in other words, holding the carrier down to the maximum proposed will necessarily raise the minimum in order to enable it to earn the average. The result in practical operation will be that the rail carrier will go out of the transportation of many low grade commodities, and be compelled to raise the rate on many staple products.

I have carefully compared rates as proposed by the Traffic Association of San Francisco with rates in effect, and my conclusion is that the adoption of the proposed amendment will carry with it a reduction of revenue as derived from freight traffic, of say 40 per cent, which means absolute inability of the several railroads operated by the Southern Pacific Company to continue rendering service of a grade as at present given to the people of this State. And in conclusion I beg to submit if the railroads now serving the people of this State should be hampered by a rigid classification, and in addition a uniform distance tariff, that must be applied regardless of physical or competitive conditions, as a maximum, thus depriving the carriers of opportunity or ability to consider and thus be guided by the varied fluctuating but controlling factors that enter into the conduct of transportation within the State of California? It is my judgment that such requirement will prove a veritable boomerang, and bring about such depressed commercial and industrial conditions, not only as applied to the railroads, but as applied to each and every enterprise within its borders, as has never been felt since its organization as a State.

SOUTHERN PACIFIC COMPANY.

(Statement of G. L. Lansing, Secretary and Controller.)

The mileage of railroads in this State, as shown by report of the Railroad Commission for December 31, 1891, was as follows:

Operated by the Southern Pacific Company.....	2,894.36 miles.
Operated by other companies.....	1,483.82 miles.
Total	4,378.18 miles.

The companies not controlled by the Southern Pacific Company thus owned on the date named 34 per cent of the entire mileage. Of the effect on these roads of the proposed tariff, its author has stated that he had no knowledge or information. But when his attention was thus called to the matter, the form of the bill was changed, excluding nearly all of the lines excepting those of the Southern Pacific Company from its present operation. Mr. Leeds further explained that, though he had not examined the effect of the tariff on the smaller roads, he had examined as to its effects on the Southern Pacific Company's lines. His statement of the results of that examination furnish the principal, if not the entire fund of facts, on which the adoption of the proposed tariff and classification is justified. A fair and just judgment of the conclusions which this bill assumes, therefore, requires a careful consideration of the relevance and application of Mr. Leeds' statements as to facts, their correctness, and their sufficiency. As the measure rests on the statements of this man, a fair judgment of its merits requires also to be considered, that the bill is avowedly framed and proposed in the interest of a society of men engaged in business in San Francisco, the membership of which is secret, and one of its purposes has been stated to be to fight the Southern Pacific Company whenever and wherever it can do so.

The proposed tariff is based on those in effect in some of the agricultural Western States, and notably the State of Kansas. Its rates are lower than those of the Kansas Distance Tariff, and will, as stated by Mr. Leeds, reduce the earnings from local freight in California on the Southern Pacific Company's lines 25 or 30 per cent. The person responsible for its introduction as a proposed portion of the Constitution of our State is lately from Kansas, was at one time Traffic Manager of the Missouri Pacific Railway, operating a large system of railroads in that State, and as such is familiar with the effect on that State of the Kansas Distance Tariff. His statements on this subject convey the impression, as I understand it was intended they should, that Kansas and its roads have been prosperous, and that railroad construction has been encouraged, with corresponding development and advancement of the resources of the country. The intended inference would follow that a similar tariff for California (though the tariff proposed has been found to be lower than that of Kansas) would bring like prosperity and development to the people and the railroads of this State. Let us inquire into the railroad prosperity of Kansas.

In their report for 1890 (pp. IX., *et seq.*) the Railroad Commission of that State, in a general review of the railroad situation there, says:

"We have fifteen hundred miles of railroad which is worse than worthless to its owners, and a burden upon the commerce of the State as a whole, though a blessing to the country along its line. It came by invitation, encouragement, and support of the people; it cannot be ignored in the discussion of rate-making for the rest."

At the commencement of 1885 there were in Kansas four thousand and thirty-eight miles of road. From 1885 to 1887, inclusive, two thousand five hundred and eleven miles were constructed. Since then the annual construction has been as follows: 1888, one thousand nine hundred and sixty-seven miles were constructed; 1889, two hundred and thirty-nine miles were constructed; 1890, one hundred and thirty-

six miles were constructed; 1891, ten miles were constructed; 1892, one mile was constructed.

The conditions in Kansas controlling rates and traffic have thus brought railroad construction in that State to a stop.

In 1890 the Kansas Commission had under discussion the adoption of the Iowa Distance Tariff, the rates of which were lower than those in Kansas, and decided to maintain the higher tariff for the following reasons (Rep. 1890, pp. 117 *et seq.*):

1. The population of Iowa is greater than in Kansas.
2. Freight tonnage is correspondingly greater. For the year ending June 30, 1889, the freight tonnage over all the roads operating in Iowa was 36,645,038; in Kansas, 21,454,367. Tons per mile of road in Iowa, 1,452; in Kansas, 1,321.

3. Expenses in Kansas more than in Iowa. Operating expenses and taxes per mile in Iowa, \$3,144 40; in Kansas, \$3,347 88.

The Commission then conclude: "As to those roads whose sole or chief dependence is local traffic, the reports show that they are far from being self-sustaining. What the people living in the agricultural States of the West are chiefly interested in, is low rates to points where the great bulk of the surplus products must go to find a market for consumption; there the prices are fixed. Rates of charges for transportation to intermediate points do not affect the prices to the producer, but the cost to the consumer." (p. 118.)

If the items of this comparison made by the Commission as between Kansas and Iowa were applied as between Kansas and California, the result would prove a greater argument against the proposed California Distance Tariff than even that shown by the Commission against the Iowa Distance Tariff.

Compared with Iowa, Kansas shows less freight traffic by one hundred and thirty-one tons per mile of road, with an increase of \$203 per mile for expenses, or 6½ per cent. The returns for all California roads are not summarized so as to afford a comparison; but comparing the Pacific system lines of the Southern Pacific Company with the Iowa lines, shows for the California system a less freight traffic by one hundred and six tons per mile of road, with an increase of \$2,144 per mile for expenses, or 68½ per cent.

A comparison of results for all roads in a State can clearly be used only in a most general way, and to one not familiar with all the conditions is apt to mislead. Thus, the fifteen hundred miles of road which the Kansas Commission characterize as worse than worthless to its owners, but a blessing to the country along its line, would, if its returns were added to those of a prosperous system, modify the total result so as to give the false impression that the prosperous lines were poor. Railroad systems similar in size, traffic, and general conditions, so far as such are available, furnish the fairest and most reliable basis of comparison possible. Such a comparison can be made between the Pacific system of the Southern Pacific Company and the Missouri Pacific system. As shown by the maps published in the annual reports of these companies, the former consists of main lines, with numerous branches and feeders extending through the State of California, and into neighboring States and Territories, and the latter occupies a relative position to the State of Kansas. As the author of the proposed amendment to our Constitution was an officer of this Kansas company, he will be able to exercise a

careful criticism of my statement of facts regarding that system, and save your honorable committee from error in founding upon them any false conclusions.

The following is a comparative statement of the operations and the cost thereof for the systems named:

MISSOURI PACIFIC SYSTEM VS. SOUTHERN PACIFIC COMPANY.

Comparative Statement of Operating Expenses per Unit of Traffic.

Year, 1890.	Missouri Pacific System.	Southern Pacific Co. (Pacific System).
Operating expenses	\$18,096,951 00	\$21,976,218 00
Revenue train miles	17,558,465	16,436,398
Operating expenses per train mile	\$1.030	\$1.337
Freight and passenger car miles	247,847,050	180,587,114
Operating expenses per car mile, in cents	7.302	12.169
Freight cars to a train	20.00	15.41
Tons of freight to a train	160.7	136.8
Tons of freight one mile	1,744,226,042	1,260,513,051

Year, 1890.	Missouri Pacific Excess.		Southern Pacific Excess.	
	Amount.	Per Cent.	Amount.	Per Cent.
Operating expenses			\$3,879,267	21.43
Revenue train miles	1,122,067	6.82		
Operating expenses per train mile			\$0.3070	29.80
Freight and passenger car miles	67,259,939	37.24		
Operating expenses per car mile, in cents			4.867	66.65
Freight cars to a train	4.59	30.00		
Tons of freight to a train	23.90	18.00		
Tons of freight one mile	483,712,991	38.37		

From Annual Reports of railroad companies, 1891.

It will be seen that on the Missouri Pacific, revenue trains ran 1,122,067 miles, or 6.82 per cent more than on the Pacific System. At the same time the cost to the Pacific System was for operating expenses, \$3,879,267, or 21.43 per cent more; and the cost of operating expenses per revenue train mile was 29.80 per cent more than on the Missouri Pacific lines. But these items do not furnish a full comparison of the relative cost for the service performed, as the operating expenses alone do not indicate the work done, and the train miles do not show how many cars the trains hauled, nor the amount of traffic they carried.

The statement further shows that the Missouri Pacific freight trains hauled an average of 20 cars to the train, to 15.41 cars on the Pacific System, or an excess of 30 per cent; and carried an average of 160.7 tons of freight to a train, compared with 136.8 tons on the Pacific System. Considering the work done by all revenue trains in the transportation of freight, passengers, express, and mails, and that the operating expenses are incurred in the performance of this combined

service, the natural basis of comparison for the cost of the service performed by a railroad is the mileage made by cars in revenue trains, including both freight and passenger. This affords, in fact, the only fair and complete unit of measurement, as it embraces on the one hand the earnings from all classes of traffic carried, and on the other the operating expenses which have been caused in part by each class of the earnings. On this basis of comparison, then, the statement shows that the car mileage on the Missouri Pacific exceeded that on the Pacific System by 67,259,939 miles, or 37.24 per cent, and at the same time that the cost per car per mile for operating expenses for the Pacific System exceeded that for the Missouri Pacific by 4.867 cents, or 66.65 per cent.

If the Missouri Pacific were subject to the conditions of operation which prevail on the Southern Pacific lines, the operating expenses of that Kansas system would have been increased 4.867 cents per car mile, or the annual amount of \$12,062,714. This sum added to the present operating expenses would make \$30,159,666 as the operating expenses of the Missouri Pacific system; and as the gross earnings of that system amount to \$25,473,583, it would have failed to pay its operating expenses by \$4,686,083, instead of having earned a net amount of \$7,376,631, as was the case.

Or, reversing the comparison and applying the cost of the service on the Kansas system to the Southern Pacific lines, the expenses of the latter would have been reduced by the amount of \$8,789,175. Thus, if the conditions of operating here were as favorable as in Kansas, the operating expenses of the Southern Pacific lines would have been less than they were by \$8,789,175—a sum which would represent an annual dividend of 5 per cent on \$175,783,500.

The data for this statement is taken from the annual reports of the companies named. The figures used represent with both systems the same items. The operating expenses are in each case prepared under the printed detailed rules prescribed by the Interstate Commerce Commission and the State Railroad Commissions of California and Kansas. The principal causes of this contrast in the operating expenses of the two systems are the following:

1. The large amount of mountain road in California having heavy grades and curves, requiring greater power to haul a given load, or requiring lighter loads to a train, compared with the Kansas system, the roads of which are comparatively on a level.

2. The greater volume of traffic carried by the Kansas system, which, other things being equal, reduces the rate of cost per car mile or per ton mile, as the expenses of administration, supervision, maintenance, and repairs are imperceptibly increased by an increase of traffic, and the more direct expenses of conducting transportation are not increased in proportion to the increase of business.

3. The greater cost of labor in California, which has been shown by Mr. Curtis to be about 30 per cent, and all material and supplies in which labor is an element of production, including locomotives, cars, machinery, rails, and all other manufactured articles which are manufactured in the Eastern States and have the transcontinental transportation added to their cost in California.

4. The greater cost of fuel in California, making the comparative cost for fuel consumed by locomotives as follows:

Year 1890.	Cost for Fuel.	Locomotive Miles.	Cost per Mile Run—Cents.
Missouri-Pacific System.....	\$1,549,797 04	23,165,875	6.69
Southern Pacific Co., Pacific System	4,016,254 59	19,697,178	20.39

If the cost of fuel per mile run on the Pacific System were as low as on the Missouri Pacific, the cost of fuel consumed by locomotives in the year named would have been \$1,317,741 20, as compared with the actual cost of \$4,016,254 59. Or, if the average rate for the Missouri Pacific were as great as on the Pacific System, the cost for fuel consumed by locomotives for the year would have been on the Missouri Pacific \$6,273,318 95, as compared with the actual cost of \$1,549,797 04.

Mr. Leeds has suggested here that the greater cost of coal on Southern Pacific lines is due to that company's manner of accounting, in adding to the cost of coal transportation charges over the company's own lines. This company's practice in this respect is that common to all systems consisting each of several railroads belonging to different companies. To make a proper accounting of earnings and expenses for each railroad, materials shipped over one road for use on another of the same system, are charged with freight at a nominal rate to cover the bare cost of the service. The same practice is followed on the Missouri Pacific system, as is noted in the Annual Report of that company for 1891, page 104.

Nor are the results shown by this comparison exceptional or peculiar. A similar comparison between the Southern Pacific Company's lines, and the lines of any other large system in the Western agricultural States, will give like results.

The rates of cost per unit of service for the systems named are as follows:

Year 1890.	Operating Expenses Per Car Mile—Cents.	Excess of Cost for S. P. Co. Per Car Mile—Per Cent.
Southern Pacific Company, Pacific System.....	12.169	-----
Missouri Pacific System	7.302	66.65
Union Pacific System	8.194	48.51
A. T. and S. F. System	6.884	76.77
Northern Pacific Railroad.....	8.784	38.53

The rate of cost per car mile for Southern Pacific Company is 12.169 cents; the highest except this is 8.784 cents for the Northern Pacific Railroad. The difference in these rates is 3.385 cents per car mile. Thus, compared with the system least in contrast with the Southern Pacific Company, the excess of cost for operating expenses on this company's lines amounts for the service performed to the annual sum of \$6,093,000.

MR. LEEDS' STATEMENTS.

These facts are in direct contradiction to the results reached by the proponent of this constitutional amendment, and upon which the tariffs in the amendment are justified. Mr. Leeds has said, "They

(the Southern Pacific Company) claim that operating expenses are higher here than in the East, owing to the high price of coal; I believe I have shown that one half the amount of coal here provides the same service as in Kansas."

And again, he states the following summary of his testimony: "The operations, earnings per mile of road, the comparison of operating expenses, the information that California is paying to this road about twice or more than twice as much per mile as is earned by roads in other portions of this country, also the proposition that it is no more expensive here to operate a road, or should not be, than in that territory, should be quite sufficient, it strikes me, and demonstrates the necessity for some reduction."

This summary of alleged facts deserves careful examination, for if it contain errors, or facts irrelevant to the issue, the demonstration would fail and the Traffic Association amendment would rest only on assertion. The statement resolves itself into four propositions, which I will consider in turn.

First—One half the amount of coal here provides the same service as in Kansas. This is a point of the first importance, as the cost of fuel is the largest single item of expense in the operation of a railroad. It has been shown by Mr. Curtis that the proposition has no foundation in fact, and that it was based on a blunder made by Mr. Leeds in his calculations. In his comparisons of the relative economy in the use of coal on the lines of the Southern Pacific Company and the East, Mr. Leeds has selected and has used solely for the latter territory the Atchison, Topeka, and Santa Fe system. This system operated on June 30, 1892 (Annual Rep., 1892, pp. 10, 11, 69), 7,130 miles of road, including in this the Atlantic and Pacific, Southern California, and other railways, aggregating 1,933 miles in California, Arizona, New Mexico, and Mexico. Thus covering for these part of the same territories and where the conditions are the same as for the Pacific System lines. Had his comparisons, therefore, proven that the cost of coal was greater on the Atchison system than on the Pacific System of the Southern Pacific Company, that result would have been irrelevant in a comparison of cost as between California and Kansas.

But taking even the Atchison system, as quoting from the reports and the same pages as were used by Mr. Leeds, the results shown as to fuel are as follows (reports Atchison, Topeka, and Santa Fe Railway Company, 1891-92, page 82; reports Southern Pacific Company, 1891, page 66):

	A. T. & S. F. System.	S. P. Co. Pacific System.
Locomotives, miles run	34,383,445	20,356,680
Cost per locomotive mile run for fuel	8.57 cents.	19.12 cents.
Cost of coal, per ton, average	\$2 11	\$5 79

The total cost to the Atchison system for fuel consumed by locomotives was thus \$2,946,661 23. The cost to that company would have been, at the rate which it cost the Southern Pacific Company, 19.12 cents per locomotive mile, \$6,574,114 68, an increase of \$3,627,453 45, or 123 per cent. In other words, the fact is that it costs to perform an

equal service on the Atchison system less than one half as much for fuel as it costs the Pacific System of the Southern Pacific Company.

Second—Comparisons of operation and expenses show that it is no more expensive here to operate a road than it is in other portions of this country. This proposition embraces also the preceding one, and is partly answered under that head. It has been fully answered and refuted by the statement of Mr. Curtis. There remains, however, an item that deserves notice, not from its intrinsic importance, but from the importance given to it by the author of the proposed amendment. Mr. Leeds, in his assertions that the cost of operating railroads in California is less than in other portions of this country, lays special stress and dwells at length upon the percentage of operating expenses to earnings, and he argues that as the percentage of operating expenses to earnings is less as a rule on the California roads than on some of the Eastern lines, it follows that the cost of operation here is less than there. This is not an uncommon fallacy. But that a railroad man of Mr. Leeds' experience should entertain it, is only explicable by his statement before the Railroad Commission in the Shively case, that he knew nothing about the operating expenses of railroads, his experience having been confined to the traffic department. The fact is that the percentage of operating expenses to earnings proves nothing as to the cost of operation. It being a ratio to the earnings depends as well upon the amount of earnings as upon the cost of operation. For illustration: The gross earnings of a road amount to, say \$10,000 a mile, and the operating expenses \$6,000, or 60 per cent; by a reduction in earnings to \$9,000 a mile, due perhaps to new sources of competition and with no change in the cost of operation, the ratio of expenses to earnings would be increased from 60 per cent to 66.66 per cent.

It is a rule to which I know of no exception that the most prosperous roads, those particularly which pay not only their fixed charges but dividends to their stockholders, have the highest percentage of operating expenses to earnings. I take at random for illustration the following Eastern lines:

Name of Road.	Dividends Paid—Per Cent.	Percentage of Operating Expenses to Earnings.
Lake Shore and Michigan Southern	5.00	68.15
Pittsburg, Fort Wayne, and Chicago	7.00	66.22
Pennsylvania Railroad	5.50	67.94
New York Central and Hudson River Railroad	4.50	66.09

Compared with the dividend roads, the ratio of operating expenses on the Pacific System lines is 58.93 per cent. Yet none of these California lines, excepting the Central Pacific, has ever paid a dividend to its stockholders. The increased ratio of operating expenses on the Eastern roads named is not due to the greater cost of the service of operation, but on the other hand is due to the much greater volume of traffic, which is accompanied by a much cheaper cost of operation, considering the service performed, and results in a larger net profit, notwithstanding their lower rates.

In contradiction to Mr. Leeds' conclusions, it is also true that a

road with a low percentage of operating expense may be unprofitable to its owners and be operated at a high rate of cost for the service performed. For illustration, the Pacific Coast Railway has shown that its gross earnings for 1891 were (Report of California Railroad Commission, 1891), \$194,034 50; operating expenses, \$94,680 87; ratio of operating expenses to earnings, 49 per cent. Notwithstanding this low percentage of operating expenses, compared with say the Lake Shore rate as above of 68 per cent, it costs to haul a train a mile on the California road \$1 19, and on the Eastern road \$1 06, and the traffic in the train is many times greater in the latter case. (Statistics of Interstate Commerce Commission, 1890, p. 639.)

The percentage of operating expenses to earnings thus proves nothing as to the cost of operating in one State compared with another State, and it has been here demonstrated that the results reached by Mr. Leeds in the use of such percentages are directly contrary to the facts. Notwithstanding the lower ratio of operating expenses to earnings here, the actual cost of operation is much greater than in other portions of this country.

Third—California is paying to this road (the Southern Pacific Company) twice as much per mile as is earned by roads in other portions of this country. In this proposition Mr. Leeds cannot of course mean literally what he says, for he must know that some roads in other portions of the country earn per mile as high as three times as much as the Pacific System. Compare for instance the above mentioned dividend paying roads:

	Gross Earnings per Mile of Road.
Southern Pacific Company, Pacific System	\$8,001 00
Lake Shore and Michigan Southern	14,437 00
Pittsburg, Fort Wayne, and Chicago	25,582 00
Pennsylvania Railroad	26,981 00
New York Central and Hudson River Railroad	24,457 00

As the Southern Pacific gross earnings per mile are about one third that shown on these roads, Mr. Leeds must mean to confine his comparisons to other roads. He has, in fact, named the Atchison system and the Missouri Pacific system in this connection. The fairness of such comparisons, or, in other words, the truth of the deduction which may be obtained therefrom, depends on the fullness of the numerous other facts to be considered. A high average earning per mile indicates in itself neither high rates nor large profits. The largest earnings per mile, as a rule, are received where the rates are lowest; thus the Eastern roads above quoted have larger earnings and lower rates than the Pacific System. And the Pacific System has larger earnings and lower rates than the other roads in California. On the Pacific System it is a fact, also, that on those roads where the earnings are largest, the rates are the lowest. This results from the common relation between a large traffic and low rates. Under natural conditions, and without arbitrary interference, rates are reduced wherever it is believed that it will induce sufficient additional traffic to give on the whole an increased net profit. Thus commodities which are produced in the largest quantities are

taken out of the body of the tariff and given special rates. This applies to all the principal products of this State. Applied to the country at large, it affects with the greatest force the staples of life, and results in the lowest rates: first, on the necessities of life, which are consumed by all; second, on the common comforts, consumed by a less number and to a less amount, and third, to the luxuries of life, which take the highest rates and are enjoyed by the few. The reductions of rates, under natural conditions, with the object of securing an increase of traffic with a lower rate but a larger net profit, thus results in the greatest good to the greatest number. On the score of rates there is nothing to be feared here from large gross earnings per mile of road. Where the earnings are largest, the rates are lowest. For any increase in earnings per mile which the railroads may secure, the patrons of the road and the people of this State will be benefited to a much greater degree. What is wanted here is more such roads, not discrimination against them such as this measure proposes.

Neither can the profits of a railroad or the reasonableness of its charges be judged by the gross earnings per mile, nor by comparing this with the percentage of operating expenses to earnings. There must be considered, also, other necessary expenses, interest on the bonded debt, and a fair return on cost of the property. These charges are all greater for the railroads in California than in the States of the Mississippi Valley, for reasons similar to those stated in explanation of the increased cost of operation. The cost of construction is much greater here now than east of the Rocky Mountains. It was still greater a number of years ago, when the Central Pacific was built. The characteristics of the greater portion of California railroads are snowsheds, trestles, bridges, tunnels, grades, and curves. Under equal conditions of cost for labor and materials, the character of the country would greatly increase here the cost of construction, compared with the level plains of the other territory named. But it has been shown that the cost of labor and materials here is much greater than in the East. Again, the use of capital has always demanded and still requires higher interest here. These conditions combined, greatly increase the actual necessary cash cost of railway construction in this State compared with the State of Kansas and its neighbors. On these points, which are paramount, because they are necessary to consider before railroads can be constructed here, Mr. Leeds has offered no evidence. He has in no case shown what were the profits of the roads here, or whether the gross earnings afforded a fair return upon the actual cash investment.

Fourth—These three propositions being proven, should be quite sufficient, and demonstrates the necessity for some reduction. This is Mr. Leeds' conclusion. With full confidence I rest the judgment of the proof of his propositions, and the demonstration he would draw from them, on the honesty, the justice, and the patriotism of this committee and the Legislature of this State.

CAPITALIZATION.

As to the capitalization of the Southern Pacific lines, Mr. Leeds has furnished your committee with the following information:

"The earnings of the roads within the State of California, including the entire system of the Southern Pacific Company, were \$9,021 per

mile; that covers 3,498 miles of road; that the interest on bonded debt paid by the Pacific System on some of that was \$8,675,587 42. I have since learned that the capitalization on that 3,498 miles of road was, for funded debt, \$144,494,500, or \$41,305 per mile; the capital stock of the same, \$165,311,300, or \$47,255 50 per mile; and an aggregate capitalization for the two, \$88,560 50 per mile."

Again, in referring to these figures, he states: "That represents 3,498 miles of railroad for which you are expected to put up the necessary money to pay the interest on capitalization amounting to \$309,805,800, or \$88,560 average per mile." And in another reference to the subject, he says: "I believe that the bonded indebtedness of these roads is very much in excess of the cost of construction."

Mr. Leeds' confusion of facts, errors of figures, and false conclusions in these statements are fairly characteristic of the popular misinformation and prejudice which exist on this subject. He confuses his remarks regarding the roads in California, the entire system, the lines covering the 3,498 miles of road, and the interest on bonded debt "paid on some of that;" so that to understand his statements one must refer to the source from which he has derived them and try to locate the figures. From such a reference to the annual report of the Southern Pacific Company for 1891, I find that the interest on bonded debt stated as being "paid by the Pacific System on some of that," \$8,675,587 48, covers not only some, but all the Pacific System lines in the States and Territories of Oregon, California, Nevada, Utah, Arizona, and New Mexico. The 3,498 miles of road includes the lines operated by the Southern Pacific Company in California, Nevada, and Utah. The capital stock named covers these last-named lines, and in addition thereto the 242.51 miles of the Atlantic and Pacific Railroad between Mojave and The Needles. The bonded debt named is apparently intended to cover the same lines as the capital stock, but by an error it overstates the amount to the extent of \$12,786,000. Through the error of dividing the amount of capital stock by the wrong mileage, the rate of capital stock per mile is in error. Correcting the errors, both in the wrong mileage and the wrong amounts for the bonded debt, it should be reduced from \$41,305 to \$35,209 per mile of road. But aside from the errors of his figures, Mr. Leeds' statement that "you are expected to put up the money to pay the interest on capitalization amounting to \$88,560 per mile," is not true in fact, and conveys a grossly erroneous impression. This sum (if not in error as to the amount) would represent the issue of both bonds and capital stock on all lines operated by the Southern Pacific Company in California, and the Central Pacific lines also in Nevada and Utah. None of these California companies have ever paid a dividend on their stock. This stock, amounting to \$97,311,390, has therefore no more relation to the past or present earnings of the roads than if not a share of it had ever been issued. The only dividend paid by the Pacific System is 2 per cent for the Central Pacific line. The much greater portion of the earnings of this road are from through traffic, the rates on which are fixed by competition, and so are entirely unaffected, whether dividends are paid or not. During the past seven years the dividends paid for this road have only been earned in one. Operated on its own merits the dividends could not have been made; they were paid from the guaranteed rental under the lease to the Southern Pacific Company.

As to the bonded debt of these roads, Mr. Leeds believes that "it is very much in excess of the cost of construction." This is but an extreme expression of a common belief which Mr. Leeds found upon his advent here, and adopted on hearsay evidence, as he has testified in the Shively case. But like some other forms of faith, investigation will show that its foundation is not on fact. There seems also to be a quite common belief abroad, that the bonded debt of the Southern Pacific Company's lines is increasing from year to year, so as to make the interest charge on them an increasing tax to be collected from the traffic carried. The following statement showing the original and the present bonded debt of each of the lines comprising the Pacific System of the Southern Pacific Company, will throw some light upon this subject:

Southern Pacific Company, Pacific System. Summary of Funded Debt of Railroad Companies, December 31, 1892.

Miles of Road Owned.	Name of Issuing Company.	Total Amount of Bonds.		
		Issued.	Redeemed.	Outstanding
1,741	Southern Pacific Railroad of California.....	\$54,335,000	\$8,398,500	\$45,936,500
390	Northern Railway	10,111,000	192,000	9,919,000
54	Northern California Railway	945,000	-----	945,000
104	South Pacific Coast Railway	5,500,000	-----	5,500,000
115	California Pacific Railroad	6,848,500	23,000	6,825,500
2,404	Total lines wholly in California.....	\$77,739,500	\$8,613,500	\$69,126,000
1,360	Central Pacific Railroad	\$74,586,000	\$15,449,000	\$59,137,000
393	Southern Pacific Railroad of Arizona	10,000,000	-----	10,000,000
167	Southern Pacific R. R. of New Mexico	4,180,000	-----	4,180,000
568	Oregon and California Railroad	17,036,000	-----	17,036,000
58	Oregonian Railroad	No bonds.	-----	-----
28	Port. & Will. Val. R. (P. & Y. R. R., October 1, 1892).....	No interest charged.	-----	-----
2,574	Total other lines	\$105,802,000	\$15,449,000	\$90,353,000
4,978	Total Pacific System	\$183,541,500	\$24,062,500	\$159,479,000

Miles of Road Owned.	Name of Issuing Company.	Bonds per Mile of Road Owned.			Reduction in Interest Charges.
		Issued.	Re-deemed.	Out-standing.	
1,741	Southern Pacific Railroad of California.....	\$31,209	\$4,824	\$26,385	\$551,760
390	Northern Railway	25,925	492	25,433	32,760
54	Northern California Railway	17,500	-----	17,500	-----
104	South Pacific Coast Railway	52,885	-----	52,885	-----
115	California Pacific Railroad	59,552	200	59,352	53,785
2,404	Total lines wholly in California	\$32,338	\$3,583	\$28,755	\$643,305
1,360	Central Pacific Railroad	\$54,843	\$11,360	\$43,483	\$1,033,060
393	Southern Pacific Railroad of Arizona	25,445	-----	25,445	-----
167	Southern Pacific R. R. of New Mexico	25,030	-----	25,030	-----
568	Oregon and California Railroad	30,000	-----	30,000	-----
58	Oregonian Railroad	-----	-----	-----	-----
28	Port. & Will. Val. R. (P. & Y. R. R., October 1, 1892).....	-----	-----	-----	-----
2,574	Total other lines	\$41,104	\$6,002	\$35,102	\$1,033,060
4,978	Total Pacific System	\$36,870	\$4,834	\$32,036	\$1,676,365

Taking all the lines that are wholly within the State of California, which includes the Southern Pacific Railroad of California, Northern Railway, Northern California Railway, South Pacific Coast Railway, and the California Pacific Railroad, they comprised on December 31, 1892, two thousand four hundred and four miles. The original issue of bonds on these roads amounted to \$77,739,000, but under the laws of the State of California every railroad mortgage, or all railroad mortgages under which bonds are issued, must provide that a sinking fund be established for the redemption of the bonds, to be paid entirely from the income of the road. The sinking fund has been used with some of these roads; it is accumulating with others, and has been used, although there is a large accumulation invested in these very bonds, although it is not shown here as a reduction. What I wish to show is that in these roads comprising the Pacific System there has been a material reduction in the amount of bonded debt, running along through years of their history, and it has resulted in a material reduction of the interest charge on the roads, which Mr. Leeds says you are expected to pay. Now, for the lines that I have stated were wholly within the State of California, of this \$77,000,000 bonds have been redeemed to the amount of \$8,600,000, leaving outstanding \$69,000,000. Now, the original issue of these bonds averaged for all the roads something over \$32,000 per mile; some of them were issued as high as \$40,000 per mile, some at higher rates, and some at \$17,500; but they averaged \$32,000. Since then, by redemptions, they have been reduced so that the present average bonded debt of the railroads wholly within the State of California—the railroad companies whose lines are wholly within the State of California which are controlled by the Southern Pacific Company—amounts to \$28,755 per mile of road. The reduction of interest, the annual interest charge, which has been effected by the retirement of these bonds, amounts to \$1,436,000. Now, taking the lines of the system; there is the Central Pacific, Southern Pacific of California, and of Arizona and New Mexico, the Oregon and California, and a couple of other little roads in Oregon. The total redemption of bonds for all these roads amounted to something over \$24,000,000, and the issue, which at the original rate, averaged \$37,000 per mile of road, has been reduced to an average of \$32,000; that includes the high rate on the South Pacific Coast Railway, which has only one hundred and four miles of road, and has a very high rate of issue per mile, owing to the fact that its principal properties are the ferries and ferry properties in Oakland, Alameda, and San Francisco, so that it is not a fair way to show that rate.

For the California Pacific the average is \$59,000 per mile, owing to the fact that that road was constructed by interests different from those at present controlling it, and at the reorganization it became bankrupt, and the reorganization was effected to save the old creditors as far as possible, resulting in scaling down the interest; so they have first, second, and third mortgages. Now, the third mortgage only pays 3 per cent; those are the roads whose bonds are highest on the system, not excepting the Central Pacific, and were issued before the control by the present proprietors over these properties.

EARL: That is the Napa Valley line? A. Yes, part of the Napa Valley line; but the principal line is between Vallejo and Sacramento.

EARL: Was that built by the present owners? Was that not built through the swamp by the present owners? A. Yes, across the swamp; but it has been reconstructed, almost entirely, at great expense.

MR. CURTIS: Been reconstructed three times?

MR. LANSING: It was washed out badly, as stated, three times. I mention that to show the highest rate. The present proprietors are not responsible, and their interest in this matter has been to reduce that rate.

As before stated, it will be seen that for the companies wholly in California, there were on December 31, 1892, 2,404 miles of road, on which bonds were originally issued to the amount of \$77,739,500; but that of this amount \$8,613,500 have since their original issue been redeemed, leaving outstanding at the present time \$69,126,000, or \$28,755 per mile of road. The redemption of bonds on those roads, wholly within this State, average for all lines \$3,583 per mile. For the Central Pacific, both within and without the State, bonds have been redeemed to the amount of \$15,449,000, or \$11,360 per mile of road. For all the Pacific System lines, the bonds redeemed amount to \$24,062,500, which with such as have been refunded at lower rates of interest, have reduced the total interest charge by the sum of \$1,676,365 per annum. The average bonded debt per mile for the entire system, including the Central Pacific Railroad, is at the present time \$32,036, and for the roads wholly in California, \$28,755. The bonded debt on these lines and the interest charged thereon, have thus not been increased, but materially reduced during the years of their operation. It has been shown that the cost of construction for the Pacific System lines has been much greater than for the roads of the Mississippi Valley and the East. This is common to all lines here, on account of the greater cost of labor, materials, and supplies; and has more or less additional application to each, due to its proportion of mountain and desert road. When these known conditions of relative cost are taken into consideration, a comparison of the bonded debt of railroads here and in the East will satisfy an unbiased mind that the cost of construction on the Pacific System has been greatly in excess of the amount of their bonded debt.

In the most thickly settled portion of our country, on the Atlantic Coast, the capitalization is the greatest. For the group of States designated in the statistical report of the Interstate Commerce Commission as group 2 (reports 1890, page 46), which includes New York, New Jersey, Pennsylvania, Delaware, and Maryland, the average bonded debt per mile is \$58,275. These roads also have issued capital stock to the amount of \$51,698 per mile, on 52.73 per cent of which dividends are paid. The greater capitalization in this group of States is due to the more expensive roadway, terminal properties, and larger equipment required to conduct their greater volume of traffic. An equal standard of construction there would cost much less than here. Coming west to a territory of lighter traffic, though greater than our own, we find in Kansas a standard no higher, and I believe not so high as that of our Pacific System lines, with which a comparison may be made under conditions fairly equal as to the standard of construction, but differing materially as to the relative price of labor and materials, and the topographical features of the country through which the roads run.

The Railroad Commission in Kansas seems by its course in that State to have inspired the confidence of the San Francisco Traffic Association

and its Manager, so that its testimony on this matter may be quoted with confidence as having at least no undue bias in favor of the railroads. In considering this subject of the returns upon capital invested, in their annual report for 1890 (p. 20), they say: "It is quite common for inflated orators to assert that from \$8,000 to \$10,000 a mile is all that a railroad legitimately costs, and that all capitalization above that is water. We have an itemized statement of the actual cash cost of 1,388 miles, 1,055 being in Kansas. We refer to the Chicago, Kansas, and Nebraska Railroad. All of this road was built within the past four years, under most favorable conditions as to cost of labor and material, and built by or under the auspices of a company whose financial credit was high, enabling it to place securities upon the market upon very favorable terms; yet the actual cost and outlay for road and equipment up to June 30, 1889, was \$29,264,497 33, or \$21,083 93 per mile. There is no water in this.

"It is true that all the railroad mileage in the State has not cost so much per mile as the Chicago, Kansas, and Nebraska line, but some has cost a great deal more. Railroads that are cheaply built in the beginning cost more before they are finished than they would if well constructed at first. A railroad thrown down on the prairie at a cost of \$10,000 or \$12,000 per mile is no criterion of the cost of a road over which immense trains run with safety thirty and forty miles an hour.

"It would, in our judgment, be a moderate estimate to put the actual average cash cost of the total railroad mileage of Kansas, including equipment, at the cost of the Chicago, Kansas, and Nebraska line, per mile."

Of the roads over which immense trains run with safety thirty or forty miles an hour, which the Commission say "cost a good deal more per mile" than the average prairie road of the State, I find the following lines, with the bonded debt per mile of road, issued on the lines in Kansas (Rep. R. R. Com. Kas., 1891, p. 266):

Name of Road.	Bonded Debt per Mile of Road in Kansas.
Atchison, Topeka, and Santa Fé Railway	\$32,780 00
Missouri Pacific Railway	27,888 00
Missouri, Kansas, and Texas Railway	39,404 00
St. Joe and Grand Island Railway	34,537 00
St. Louis and San Francisco Railway	30,143 00
Union Pacific Railway	38,891 00

The mean issue for these principal lines in Kansas is \$33,940 per mile. With the Southern Pacific Company lines in California we have shown it to be \$28,755, and for the entire Pacific System, including the Central Pacific, with its mountain grades, tunnels, snowsheds, and war prices for labor, material, and capital, but \$32,036 per mile.

Mr. Leeds is wrong, Mr. Chairman, in saying, "You are expected to put up the necessary money to pay the interest on capitalization, amounting to \$88,560 50 per mile," for the lines of this company, which are wholly in California, are paying interest only at the rate of \$28,775 per mile, and are paying no dividends. The large capitalization of the Central Pacific is due to the great natural obstacles which had to be overcome in the construction of that road, and to the much greater cost

of labor, materials, supplies, and equipment, due to construction in time of war and before the completion of this line had furnished the present low rates of transportation across the continent. The bond issue was provided by Act of Congress, the United States bonds being based on \$16,000 per mile on the plains, \$32,000 in the foothills, and \$48,000 per mile crossing the Sierra Nevada Mountains. The company was then authorized to issue its bonds for the same amount. After paying annually the 25 per cent of net earnings required under the provisions of the Thurman Act into the United States Treasury, the earnings of the Central Pacific lines are not sufficient to meet the accruing interest on the issue of the United States bonds. These bonds were loaned by the Government to this company in the same way that loans are made by private parties to the company on the issue of its bonds. They were made payable in United States currency, and accepted by the company at par, amounting to \$27,855,680, interest on which at 6 per cent is an annual charge to the company; and it may be of interest here to note that, during the time of construction, all payments made on the Pacific Coast were in gold, which was then at a high premium. In order to convert these bonds into gold to pay its payrolls and bills, the company was compelled to sell them for \$20,735,000, or at a discount of \$7,120,000.

EARL: Then it is erroneous to think the Government put up money, gold coin, to the amount of the debt that it holds against the Central Pacific? A. Yes, sir.

Q. They put up bonds and then took a mortgage to secure the face value of them as a debt? A. The Government never put up a dollar in coin. They issued their currency bonds at 6 per cent, and loaned the bonds to the company on condition that the company should repay the bonds with interest. They being currency bonds, and currency at that time being at a great discount, everything here being in gold, the company had to utilize them at a great loss.

LANSING: I would submit to the committee a statement showing the income from operations of the Central Pacific Railroad for the past five years, and each of them, showing gross earnings from other sources of income to the company; that is, other sources in connection with the operations of the property—not land sales; not for sales of their property—the operating expenses and the other charges which are necessarily a charge against the income of the road, and which would be a legitimate and proper charge required from the road before a justification of a reduction in its rates reducing its income would be allowed under the recent rulings of the United States Courts, fixing what is a reasonable rate, or establishing the principle of what is a reasonable rate.

For 1887 the gross earnings or income of this line amounted to—I will read in round figures—say, \$14,000,000; the charges against it, the whole item of charge, a little more than that.

In 1888 the income was nearly \$16,000,000, and the charges about \$16,500,000.

In 1889 about \$16,000,000, and the charges \$16,500,000.

In 1890 the income \$16,000,000, and the charges \$16,750,000.

In 1891 it earned a net of \$473,000.

For the whole period—five years—together, the result was a net deficit of \$2,228,000. This is without payment of any dividend; the dividend,

as I have stated, being payable under contract or lease to the Southern Pacific Company, and guaranteed.

BURKE: What road was that?

A. The Central Pacific Railroad. That is the largest system of lines, and, as every one here knows, the most important to the Pacific Coast. I would like to say something about the Southern Pacific Railroad of California. This is probably, by a great deal, the most important company in the State of California.

BURKE: I am sorry, Mr. Lansing, that I cannot stay any longer, as I have a pressing engagement.

LANSING: It is the most important road, because it has a greater mileage in this State than any other line; it has about fifteen hundred miles in operation, and has in contemplation the construction of about fifteen hundred miles additional, making something over three thousand miles of road.

I have a statement showing the growth of this company—showing, in similar form to that which I have given for the Central Pacific, the earnings and expenses and fixed charges for each of the past five years, which show an increasing condition of prosperity. This company consists of a number of lines that have been consolidated from time to time with a view of effecting economy in their operation, and of having them stand together as a system to protect each other—for the better lines to help the weaker, and so strengthen their securities that additional capital can be secured for the extensions that have been contemplated.

The income has been increasing from year to year, until in 1890 there was a surplus of about \$14,000 out of gross earnings amounting to \$8,896,000. In 1891 there was a surplus of \$937,000; and in order to carry out the contemplated extensions that the proprietors of this property have in view in the State, they amended their articles of association, providing for quite a number of new lines, making in all about fifteen hundred miles proposed to be constructed, as I have stated.

I would like to file the amended articles of association, which describe all the lines and their terminal points. And it was hoped and is still hoped that the increasing prosperity would allow the controllers of the company to issue bonds on the proposed lines, or to make a contract with bankers for supplying them with funds as the bonds were issued on constructed road, and they have laid their plans with that object in view.

For the whole period of five years, which I have before me, there is a net deficit of \$1,765,000; but as I have said, the latter portion of the period shows better than for the former portion.

MR. EARL: How long? A. Five years; 1887 to 1891, inclusive.

Now, the bonds which have been issued by the Southern Pacific Railroad, of which this is simply the continuation, were under conditions existing at that time of the cost of construction, and character of the road, and the requirements of capital, fixed at \$40,000 per mile at 6 per cent. On the lines which have recently been constructed, the issue has been limited to \$22,500 per mile at 5 per cent. They have issued no more bonds than with the capital stock which they pay in, on which they pay cash, is required to carry on the work; that is what has been planned, and what is hoped for the extension of these lines.

I submit this statement also, with blue print for a map, showing the

contemplated lines in dots. This is the blue print map that was made for the information of the bankers interested in furnishing the capital for the enterprises.

[Mr. Lansing here filed blue print and statement.]

I wish to say that one branch of this company's projected line is now in process of construction, running down the coast from San Francisco to Santa Margarita, thence to San Luis Obispo and Santa Barbara; and there is a line contemplated crossing the mountain range separating the coast from the San Joaquin Valley; there are a number of lines—branch lines—on the coast and throughout the San Joaquin Valley.

I wish to say that there is no question but, if from the investigation which we have made into the operation of this proposed constitutional amendment, if a California distance tariff of that kind is imposed upon these roads, there is no possibility of their being constructed by the present proprietors, and all work at present on them must cease.

I would like finally to add a note on the subject of reductions in rates.

REDUCTION IN RATES.

The business of railroad transportation I hold to be a legitimate business, and one on which the welfare of this State in a great degree depends. It involves the control and use of a vast amount of capital, which is of necessity a permanent investment in this State. It cannot be operated to the injury of the State without operating to its own injury. The interests of the communities which it serves and the patrons of its lines are also its interests, and to wrong one of these would be bad policy, as well as unlawful. Such differences as may exist between the company and its patrons as to rates that are unreasonable or discriminations that are unjust, it would be the company's paramount interest to remedy if wrong, or rest the settlement with a proper Commission or Court if agreement were not otherwise possible. Its business can only be prosperous if conducted on business principles. To the best of the judgment of its proprietors and officers, it has been guided by these principles in the past. I believe the best results for all concerned will follow from adhering to them in the future, and with the growing wisdom of experience, which is as useful to the railroads as to the people. Mr. Curtis and Mr. Gray have illustrated the remarkable growth and development of this State, and the dependence of such prosperity on the railroads. I wish to strengthen their testimony by showing the reductions which have been made by the Pacific System lines under natural conditions of regulation and competition in charges for the transportation of passengers and freight.

Statistics, first, show the average rate of charge for transportation of the Pacific System lines in 1872; for this year the average rate of freight per ton per mile was 3.66 cents. In 1891 it had been reduced to 1.835 cents. These figures do not include company's freight. The reduction during this period thus amounts to 1.825 cents, or half the entire rate. This means, that if the average rate of 1872 were collected on the tonnage of the present time, the freight earnings of 1891, which were \$21,500,000, would have been \$43,000,000.

But, during this period named of twenty years, great changes have affected these lines by the construction of other and competing trans-continental railways, and as both through and local traffic are included

in the tonnage shown, it may be naturally claimed that the reduction is chiefly due to the competition on the through and does not much affect the local traffic in the State. To answer this, the statistics for the past ten years have been made to show separately the local tonnage and the through. The following are the statistics for both freight and passenger traffic for 1881 and 1891, which afford a more detailed comparison for this period:

FREIGHT STATISTICS—SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM).
(Not including company's freight.)

	1891.	1881.	Increase or Decrease.	Per Cent.
<i>Through Freight.</i>				
Miles road operated.....	4,625	2,707	*1,918	70.85
Earnings.....	\$7,972,452	\$3,423,499	*4,548,953	130.28
Tons carried.....	738,914	309,329	*429,585	138.89
Tons one mile.....	669,634,362	259,684,517	*409,949,845	157.8
Ton miles to one mile of road.....	144,786	95,931	*48,855	50.93
Average rate per ton per mile (cents).....	1.190	1.318	+0.128	9.71
Earnings per mile of road.....	\$1,724	\$1,265	*\$459	36.
<i>Local Freight.</i>				
Earnings.....	\$13,536,142	\$12,418,640	*\$1,117,502	9.00
Tons carried.....	4,949,142	1,862,712	*3,086,430	165.6
Tons one mile.....	502,437,824	373,170,214	*129,267,610	34.64
Ton miles to one mile of road.....	108,635	137,854	+29,219	21.20
Average rate per ton per mile (cents).....	2.694	3.323	+0.634	19.05
Earnings per mile of road.....	\$2,926	\$4,588	†\$1,662	36.23

*Increase. †Decrease.

PASSENGER STATISTICS—PACIFIC SYSTEM, SOUTHERN PACIFIC COMPANY.

	1891.	1881.	Increase or Decrease.	
			Amounts.	Per Cent.
<i>Through Passengers.</i>				
Miles of road operated -----	4,625	2,707	*1,918	63.43
Earnings -----	\$2,793,295	\$2,048,090	*\$745,205	36.39
Passengers carried -----	163,517	77,998	*85,519	109.64
Passengers carried one mile -----	136,625,120	63,721,671	*72,903,449	114.41
Passenger miles to one mile of road -----	29,540	23,540	*6,000	25.49
Average rate per passenger per mile (in cents) -----	2.04	3.21	+1.17	36.45
Earnings per mile of road -----	\$603 95	\$756 56	†\$152 61	20.00
<i>Local Passengers.</i>				
Earnings -----	\$3,538,485	\$4,644,738	*\$3,893,747	83.83
Passengers carried -----	17,701,359	6,884,936	*10,816,423	157.77
Passengers carried one mile -----	387,057,215	145,106,233	*241,950,932	166.74
Passenger miles to one mile of road -----	83,688	53,604	*30,084	56.12
Average rate per passenger per mile (in cents) -----	2.21	3.20	+0.99	30.94
Earnings per mile of road -----	\$1,846 16	\$2,543 38	†\$697 22	27.40

*Increase. †Decrease.

It will be seen that for the past ten years the through freight shows a reduction in average rate of .128 cents, or 9.71 per cent, while the local rate has been reduced .634 cents, or 19.05 per cent. With passenger traffic there has been a reduction in the average rate on through of 1.17 cents, or 36.45 per cent, and with local an almost equal rate, or .99 cents, or 30.94 per cent.

If the average rates of 1881 had been collected on these roads on the traffic of 1891, it would have increased the earnings of the latter year by the following amounts:

Through freight earnings.....	\$853,328 89	
Through passenger earnings.....	1,598,513 90	
Total through.....		\$2,451,842 79
Local freight earnings.....	\$3,184,988 78	
Local passenger earnings.....	3,831,866 42	
Total local.....		7,016,855 20
Total reduction.....		\$9,468,698 99

There have thus been greater reductions affecting the local traffic during the ten years past than there have been for through. This has been caused by following the conservative and wise policy of developing the resources and building up the territory local to the company's lines. As there is no State which during the past ten years has shown a more prosperous growth than that of California, so I believe there is no system of railroads in this country that has made concessions and reductions in its local rates aggregating so great an annual sum.

VOLUME OF TONNAGE.

At a recent meeting of this committee, Mr. Martin informed the committee and the proponent of the resolution that the proposed California Distance Tariff for freight rates was not the same, but was materially lower than the Kansas Distance Tariff. This fact, thus for the first time being made public, was acknowledged by Mr. Leeds in a published interview in the San Francisco "Examiner" of February 3d, where he says:

"Martin has commented on the fact that my rates are much lower than those in the Kansas Distance Tariff. I admit that such is the case. I intended that such should be the case. The Kansas roads have not so much tonnage per mile as is the case here."

The last sentence is intended as a justification by Mr. Leeds of the lower tariff for California. If it were true (and other things were equal), it would be a strong argument for such a difference, for it is a fact with which all railroad men are familiar that an increase of tonnage can be carried by a road without a corresponding increase of expense. So the roads under the regulation of natural conditions study to reduce their rates where there is a fair premise that the traffic will be thereby increased in sufficient volume to produce a larger net result. If, on the other hand, it should prove that the volume of tonnage is greater on the Kansas lines than in California, such fact would afford an equal argument in justification of higher rates here. Indeed, laying aside the facts which have been proven as to the excessive cost of operations in California, and admitting for the sake of argument that the service of transportation costs no more here than in Kansas, this factor of the volume of tonnage is of sufficient importance in itself, that if it is found to be less on the Southern Pacific Company's lines than on the Kansas systems, to condemn the California Distance Tariff in its application to the lines of this company as unfair and unjust. This is the comparison

which Mr. Leeds invites. Now, what are the facts? The following data, covering all the principal railroad systems in Kansas, and for those having the largest traffic, is taken from the report of the Railroad Commission of that State for 1891 (p. 301).

The corresponding data for the Pacific System of the Southern Pacific Company is taken from the annual report of that company for 1891 (p. 68).

MR. LANSING: So that the average in California, taken by itself, is a little lower than for the Pacific System, and the Pacific System is 93.00 ton miles lower than Kansas, or 37 per cent lower than the roads in Kansas, which I have mentioned; those roads are not confined to the State of Kansas, but include the systems running in and out of the State, like the Missouri Pacific.

EARL: And what is the average reduction, as shown by the California Distance Tariff, from the rates prescribed in the Kansas Distance Tariff? 20 per cent, you say in your opening statement. A. Mr. Leeds stated that applied to the local business of California, as I understand him, that his first statement was 25 or 30 per cent, that is on the local business; but, applied to the total business, amounted to something like 21 per cent.

EARL: No, I don't mean that. I mean this: You say that you have calculated the average reduction shown by the California Distance Tariff with reference to the Kansas Distance Tariff—you yourself had, and you found the average to be about 20 or 25 per cent? A. No; you misunderstood me.

EARL: Well, then I guess it was Mr. Smurr, perhaps.

MR. SMURR: Ranges from 10 to 31 per cent.

LANSING: It is hard—in fact, impossible—to make a correct estimate of the effect of a tariff of that kind upon the whole tonnage of a road. We have to apply it to the various commodities in such a way that it takes a great deal of time and labor to make it up, so that, as Mr. Smurr has applied it to the different classes as closely as he can, it gives a different rate for the different classes. Then the effect upon the whole revenue would depend upon what the volume of traffic in each of those classes—the proportion—was to the whole. It is very material; that is sufficient.

The following statement shows the volume of tonnage of the Pacific System lines in each State and Territory, and the proportion of through and local in each case. This is an interesting document, and verifies the fact which I have stated, that for the California lines, the volume of tonnage is less than for other lines. For instance, in California, the proportion of through you will see the explanation in that, is 103,000 tons; while in Nevada the through was 409,000 tons, and Utah 411,000 tons, that is larger than the whole average of California; taking the through and the local in this State, it is only 59,000 and 55,000 respectively, and so in Arizona, the average for through is 216,000, and for New Mexico, 214,000, which, added to the local they have there, makes a higher total average for the line in those desert territories than the average in California, when it is applied to all the little branch lines of the system in this State:

STATEMENT SHOWING VOLUME OF TONNAGE.

PACIFIC SYSTEM, SOUTHERN PACIFIC COMPANY VERSUS KANSAS SYSTEM.

	Mileage.	Tons—Rev. freight one mile.	Tons one mile, per mile of road.
A. T. & S. F.	4,582.12	1,456,057,989	317,588
C. B. & Q.	5,284.25	1,645,745,417	311,440
C. R. I. & P.	3,408.56	1,082,223,392	317,492
K. C., Ft. S., & M.	670.60	405,362,003	605,605
Mo. Pac.	3,176.82	877,751,584	276,282
M. K. & T.	1,670.36	585,272,713	351,150
S. L. & S. F.	1,326.93	357,170,350	254,224
U. P.	1,821.86	1,209,224,850	663,673
Total	21,941.50	7,618,808,298	347,225
Pa. System, S. P. Co.	4,625.17	1,172,072,186	253,421

These figures include only revenue tonnage. It will be seen that the volume of tonnage for the Pacific System averages 253,421 tons per mile of road, compared with the average for the Kansas lines of 347,225 tons per mile, and that the volume of tonnage here is 93,804 tons per mile, or 37 per cent less than with the Kansas lines. From these facts it follows that the Kansas Distance Tariff, if reasonable to the railroads there, would be unreasonable here, and Mr. Leeds' tariff being still lower, would be still more unjust if applied to this State.

But the volume of tonnage above quoted is the average for all Pacific System roads, including those in Oregon, Nevada, Utah, Arizona, and New Mexico, as well as those in California. It has been intimated here, and would be readily believed unless one were familiar with the traffic, that the California lines had a much greater volume of tonnage than those in the other States and Territories named. This, however, is not the fact. The larger number of small local branch lines in California, compared with the main trunk lines of which the mileage of the other States and Territories is composed, with the exception of the State of Oregon, reduces the volume of tonnage in this State to 238,090 per mile of road, compared with 267,084 for the remaining roads.

The following statement shows the volume of tonnage for the Pacific System lines in each State and Territory, and the proportion of through and local in each case:

Territory.	Through Freight— Ton Miles.	Local Freight— Ton Miles.	Total— Ton Miles.
California	103,072	135,018	238,090
Nevada	409,102	69,052	478,154
Utah	411,418	55,168	466,586
Oregon	17,205	35,397	52,602
Arizona	216,921	67,461	284,382
New Mexico	214,755	98,857	313,612
Average	143,843	105,422	253,421
Average, California excepted	208,855	58,229	267,084

EARL: Will you file those statements with the committee?

MR. LANSING: Yes, I will file all of them.

EARL: I hoped to see some one of the Traffic Association with us—Colonel Barry—or some one to-night, so as to fix a time to adjourn to.

MARTIN: I understood Mr. Barry to say that he was going to attend the meetings from this time on, and he would have something to say when we got through.

EARL: So I understood. I am at a loss to set a time for the next hearing on account of the Traffic Association not being represented here to suggest an hour and time that will be convenient.

MARTIN: I hope that whatever hearing may be had, that sufficient notice may be given so that we may be represented here. Of course, we cannot get here in a day; we ought to have sufficient notice.

EARL (to clerk): Send for Senator Gesford.

EARL: Mr. Lansing, have you a duplicate copy of any of this matter that you have presented here this evening?

LANSING: Yes, I have, but not here; I can furnish you a duplicate.

EARL: Could you furnish me a duplicate? A. Yes, sir.

EARL: About when? A. Think I could send it to you to-morrow.

EARL: Senator Gesford, the hour of adjournment has arrived, and we would like to know what time would be satisfactory to yourself, as proponent of this measure, and the Traffic Association, for you to meet again, when any statement that Mr. Barry would like to make and yourself, can be made.

GESFORD: Any time will suit me after Thursday. You are a member of that other committee, and I suppose you will be engaged there for two or three evenings, and probably we can't reach this till the latter part of the week.

EARL: It is getting so late in the session it seems too bad to defer it; but we will be too busy in that committee to-morrow night and the next night, and possibly any other night; would say Monday; next Monday night.

GESFORD: Next Monday night; that would be agreeable.

EARL: Very well; the committee stands adjourned until next Monday night, at 7:30; either to meet at this place or down stairs, Department Two; you will ascertain from the Sergeant-at-Arms—Monday night, 7:30 o'clock.

MONDAY EVENING, February 13, 1893.

MR. EARL: Committee will come to order. Mr. Martin, at the last sitting of the committee did the Southern Pacific Company finish its showing?

MR. MARTIN: Yes, sir; we finished everything we have to say.

MR. EARL: Is there any one else that desires to be heard? Colonel Barry?

MR. BARRY: In deference to the notice that has been taken of the mere suggestion on my part that, representing the Traffic Association, I desire to present a written statement of Mr. Leeds', in so far as he could make one, answering what has been testified to or suggested by way of argument to the committee before he departed. I say I simply made that suggestion, but apparently more heed was given to it than I expected, and more than was anticipated on the part of the Traffic Association—because the committee was apparently inconvenienced by my absence at the last meeting.

This has been a source of regret to me, because the committee has

been very courteous not only to representatives of the Traffic Association, but to every one who has appeared before them, and I know the pressing duties of legislation weigh on you all the time, and you cannot devote all of this session to this one particular subject. I therefore desire to say to you that it was absolutely unavoidable on my part, and further that there was nothing to indicate at the previous meeting of the committee that the case would be closed at this time.

Now, I desire very briefly to say a few words myself after I shall present what is the real main object of my appearance before you, the communication written by Mr. Leeds prior to his departure for the East on business of even equal importance to the State of California as the consideration of this subject. It was by no means the result of faltering on the part of the Traffic Association or loss of confidence on the part of Mr. Leeds in this Legislature, or inability to comprehend the momentous question presented to you as the representatives of the State of California that caused him to depart in the midst of this discussion. But there are many sides to the methods of relieving the State of California from the oppression of the railroad corporations that have a monopoly.

There are many methods of relief, other than by abolishing this Railroad Commission, and establishing a maximum tariff, even on the lines of the Kansas or any other traffic lines. There are other methods of relief coming outside of competing railroads, even by the use of that great natural highway which God gave the State of California, and which if the Central Pacific Railroad did not prevent it, would have made us a happy, prosperous, and wealthy community. The establishing of a competing steamship line—the natural use of the water, which so long the Central Pacific Railroad Company has prevented the State of California from enjoying the benefit of—that was the subject in the judgment of the Traffic Association, and also the judgment of Mr. Leeds, their representative, the importance of which caused him to depart; and unless there should be any question about the absolute confidence of the Traffic Association in Mr. Leeds, and the absolute interest it feels in this measure and all measures that will give relief to the oppressed industries of California, I desire to present to the committee, with its permission, a duly attested resolution of the Traffic Association, expressing its confidence in Mr. Leeds, and indicating that in every respect he has carried out their wishes in this regard. I will not read it, because it has already appeared in the public press, Mr. Chairman, and therefore, I will hand it to the clerk.

[Mr. Barry here handed the resolutions referred to, to the clerk.]

Now, therefore, having expressed these preliminary observations, I desire to say that it is necessary to a proper understanding of this communication of Mr. Leeds, that from his enforced departure, not the fullest and amplest answer could be made to those suggestions daily made here since his absence. It will be obvious to the committee that his answer therefore can only go into those general principles and those general ideas, anticipatory to any special information that might be brought before the committee after his departure; and I say for him, as also is my own idea, that it was not necessary for a comprehension of this question to have the time of this committee taken up with this bill from roads that had a purely speculative interest in it—roads not directly affected by this tariff regulation at all, and who speak simply

for the purpose of, and with the view of occupying the time of this committee and confusing this issue.

Nor is it necessary, Mr. Chairman and gentlemen of the committee, to a full understanding of the fact that something must be done for California, in the way of giving her reasonable railway facilities; it is not necessary to comprehend that the clamor of the people is not without cause, to become thoroughly conversant with railroad matters in every item and detail, as is the knowledge of those who have made it their lifetime study; it is not necessary for this committee, in the brief space of time allotted to it, to go outside the question presented in this constitutional amendment, and take up the time with matters that may be better understood and appreciated if the legislation outlined in this constitutional amendment ever comes before the people of the State of California. Much of it would be proper and necessary if the Legislature two years from now—the Railroad Commission having been abolished—should be confronted with the question of having to establish railroad rates of fares and freights by means of a schedule to be adopted and enforced. Therefore, with these preliminary remarks, I will read the communication, as follows:

OFFICE OF THE TRAFFIC ASSOCIATION OF CALIFORNIA,
SAN FRANCISCO, February 4, 1893.

*Hon. GUY C. EARL, Chairman Committee on Constitutional Amendments,
Sacramento, Cal.:*

DEAR SIR: It has become necessary for me to go East on business which, in its nature, is imperative, and which will render it impossible for me to appear before your committee in person to further urge the merits of Senate Constitutional Amendment No. 8, introduced by Senator Gesford on January 11th, and now pending before your committee. I therefore beg that you grant me the privilege of submitting some of the points I would desire you to consider in writing. Before I enter upon the subject I want to mention a report which, it appears, has been given some currency (evidently by the opponents of the measure), to the effect that there is a difference of opinion between myself and the Executive Committee of the Traffic Association as to the methods adopted in our work, and with particular reference to this amendment, which is understood to be inspired by the said association. I desire to say that, so far as I am aware, there is not a dissenting member of the committee, and I assert here, that I am in full sympathy with the movement; and further, that there has never been a time since the organization of the association when the committee have been more unanimous than at this time. If there is a dissenter, the fact has not been developed in any of the deliberations of the committee. I therefore pronounce all such reports, from whatsoever source, as false in their entirety. I refer to this matter only because of the possible effect it might have upon your committee or the legislators who will be called upon to consider this amendment. With reference to the abandonment of the conflict (in the way of legislation) with the railroad monopoly of California by the Traffic Association or by myself, there is at this time no intention of such a course, as time will doubtless prove.

This amendment, as at present before your committee, contains virtually all of the principles which were set forth in the original draft;

the alterations in details have been arrived at after consideration with Senator Gesford and others, as defects were pointed out, and it would be strange if none were found in a measure affecting the whole transportation interest of the State. The amendment, as it now stands, is entirely practicable. I assure you that in the use of it the plan of a distance tariff, as a general basis, is no experiment. Outside of Central and Northern California the use of distance tariffs, made upon practically the same plan as the one submitted, is almost as universal as railroad transportation. I know of no other exception to the rule. It certainly possesses the merit of equity, in that the practice of discriminations between shippers and between places are less liable to occur, and are more difficult for the carrier to conceal; besides it insures at least a reasonable rate to all shippers, which it can be easily demonstrated is not true of California at this time. It enables a manufacturer to establish a business at any point without first going into partnership with the carrier. It also admits of the development of the resources of one point as well as another, even though the carrier may be an interested party, and under present conditions discriminating as between points and individuals.

The plan of introducing this tariff into the organic law of the State I admit is an innovation, and has been the source of some ridicule on the part of the opposition, but I desire to say that ridicule is not argument, and they have not been able to show that it is unconstitutional. The plan certainly possesses the merit of placing the carrier in the position of supplicants for legislation (instead of obstructionists), provided that changed conditions of a road under the operation of the law may show it to be necessary; my view of the measure being, that its operations upon a road earning over \$4,000 per mile would be arbitrary only until the following term of the Legislature if by chance they in the meantime earned less. The fundamental principle being, that the Legislature shall fix the rates of charges of all roads in the State at all times. That the maximum rule shall apply only to roads which earn more than \$4,000 per mile. That this tariff shall cease to be operative on all roads in the State as soon as the Legislature shall have performed the duty imposed upon them under the Constitution as amended. I hold further, that by the adoption of any tariff of uniform application to the roads of the State, at least as much time as the period at which this tariff could become effective, until the following Legislature would be necessary to develop the full effect of its operation upon the roads, and the commerce in the territory in which it is applied.

The plan of putting the Western Classification in effect in this State and making it practically a part of the organic law of the State, has been subject to some criticism, and some ridicule has been indulged in by some of the opponents, because reference is made to J. T. Ripley, Chairman. This, however, refers to the title only, and is to make the description of the document perfect and unmistakable. As to the merits of the classification, I will say the universal use of it in all of the States and Territories west of Chicago and the Mississippi River, California included, except the Southern Pacific Company's roads in the central and northern portions of the State, also that they use it on through traffic on all portions of their system of the road, ought to constitute a reasonable assurance that California could, with a reasonable degree of safety, accept it, in lieu of such documents as are at present in use, particularly

as there is no reason why exceptions to it may not be made where it is found to be too high, and it is hardly probable that the people would suffer any material damage by reason of its being too low. There is also another reason why it should be adopted. You now have in effect in the State three classifications, the Western, and the two (so-called) local classifications of the Southern Pacific Company, all of them governed by widely different rules. The free business intercourse between different portions of the country require as uniform rules and classification as it is practicable to have (I refer to the local, or State traffic), and it is well known that it would only be practicable to adopt the Western, for universal application, if the convenience of the carriers is at all considered, as no one except the Southern Pacific Company would think of using the locals now in use by them; they have been the subject of criticism and ridicule in railroad circles for many years. Objection will be urged that the adoption of that classification for a period of two years, arbitrarily, and that the changes made by the Classification Committee will interfere with its use here unless such changes are adopted currently.

It must be borne in mind that those changes may apply, as now, on through traffic, and that there has never been any common rule or similarity between the classifications in effect in the State and those in use on through traffic; hence the grounds of such an objection cannot be well taken. As to necessary changes to meet the local requirements of the trade in the State, it does not appear that the State Board of Railroad Commissioners have been especially industrious in their revisions of classification or the rules governing the same. I believe I would be borne out by the facts if I were to state that no Commission, since the organization of the Board some fourteen years ago, has ever revised a classification or actually made a tariff without the assistance or the guidance of the road which was to use it. All of the tariffs and classifications which I have examined since I came to the State bear pretty conclusive evidence in their general characteristics of such supervision. In general use the changes in classification in what may be called staples—such as agricultural products, staple groceries, machinery (such as is in common use), implements, hardware, and iron goods—have not been very frequent or very arbitrary. It is certain such technical objections are only raised for the purpose of obstructing progress on this amendment, especially when viewed in comparison with the past methods of California roads. There would be no great necessity to make classification changes within the period of the arbitrary application of this classification as provided.

The Western Classification is used over such an extended territory, that it covers about all conditions of commerce, there being about five thousand articles named in it, and it will be found that many of the changes are made to meet the requirements of manufacturers and would not materially affect this State, which for good reasons has made no very rapid strides in manufacturing. Some reference has been made to my recent advent in this State as a reason why I am not prepared to recommend a proper tariff for use in the traffic of California. I believe I had a fair knowledge of the general principles of tariffs and the rules which apply to the handling of traffic, before that period, and have made a pretty diligent study of the conditions and requirements here since then. I believe the recommendations which have been made

by the introduction of this amendment are reasonable to the public and just to the carriers; it has been our purpose to present only such a proposition. I have been supplied with what purports to be a comparison of the proposed tariff and the existing tariff of the San Francisco and North Pacific Railroad. I have examined that tariff in the light of the annual report of that road, and find that the lowest class named in their alleged tariff would yield a higher rate per ton per mile than the earnings reported in their report to the State Board of Railroad Commissioners. They may have such a publication, but it is evident they do not use it in their business, hence the introduction of it as evidence before your committee is a deception and is insincere. No business which is at all dependent upon the item of transportation could exist under such a tariff as the one which is submitted by them.

The rate per ton per mile as reported by them as earned in the year 1891 is abnormally high, it being in the aggregate over four and a quarter cents per ton per mile; and it is not strange that there is not development enough along the road to justify a reduction below such a figure—a slight advance would naturally kill off that which must now exist under extreme difficulty.

I have been furnished with a comparative statement of replacement of cross ties which was presented before your committee. While the statement shows that the tie lasts at least two years longer in California, the comparison is an unfair one, and the party who presented it evidently selected the roads which he did for that reason. In the first place, I suppose, he informed your committee that the roads, except the San Francisco and North Pacific, belong to the same system. They run through large areas of the finest timber in the country; a great deal of it oak of the finest quality, and I presume nothing but white oak ties are used, and by reason of its location on the road and much of it more remote from market than some other white oak districts, ties are very cheap and of the very best quality to be had east of the Pacific Coast.

By taking time to digest the different arguments set up by the roads (if life were long enough to do so), they will either be found distorted, like their capitalization, or based on false premises, or upon purely technical grounds, introduced for no other purpose than delay, and to envelop the question in a cloud of mystery too indefinite to be clearly comprehended by any one except by those whose trade it is to obstruct legislation, that they may continue to oppress the people. It is good evidence of the utter insincerity of these roads to look back upon the history of the past, with reference to all of their dealings with the public in every department of their organization.

It ought to be enough to know, if their own figures are taken as a guide, their earnings are nearly double those of other roads in the country which meet their obligations; and further, that their own figures show they consume from ten to twenty per cent less of their gross earnings in the operation of the property, and their net earnings within California are largely in excess of other States on their own properties, and largely in excess of other roads. It has been repeatedly shown in evidence in the Courts and elsewhere, that the roads of the Southern Pacific Company were bonded largely in excess of the whole cost of the property and equipment—that not only did the capital stock represent no tangible investment, but as a matter of fact the promoters

put into their own pockets a large profit upon the building of the roads, but still retain possession of them, and have the hardihood to set up the claim that they should have a profit from the operation of the property in which they have not now—nor did they ever have—a dollar of actual investment.

I hope your committee will look at results, and not at the technical methods introduced in order to conceal the actual state of facts. You are called upon to pay a rate of transportation which will yield an income on a funded debt, aggregating \$41,305 per mile, and pay a dividend on a capital stock of \$47,255 per mile, on roads which in actual outlay did not originally cost more than one third the amount—if honestly constructed—and which can be duplicated to-day, and fully equipped ready for traffic, for a much less figure. And this is not all—you are asked to contribute to the support of their poor relations, the non-paying property in the outlying States and Territories; and then, I understand, their attorney, Mr. Martin, has suggested the propriety of a profit from the operation of the property, the expenses of which are paid out of current receipts, and in which the Southern Pacific Company have not one dollar of invested money.

Possibly if it were found that it were not proper for them to put on a percentage or commission for the operation of the roads, there might be a compensating factor in the profits of the Pacific Improvement Company, the nominal assets of which have been reported to be \$200,000,000 or more. I hope your committee will not allow your minds to be diverted from these governing facts by the small technical objections raised, as they are simply subterfuges. It makes no difference as to the details of how the operating expenses are made up, whether an item costs \$1 or \$2, so long as the aggregate proves that the premises upon which they argue are false.

Consider the burden, if you please, which they seek to lay upon this State, at least two thirds of which is unjust, and represents absolutely nothing which was ever invested, and then turn, if you please, to the lately completed road of the Great Northern Company, which is said to have a funded debt obligation of twenty-four thousand dollars per mile, and it will be apparent that this State is expected to assume a burden of more than a thousand dollars per mile of road annually more than will be necessary to meet the obligation of the Great Northern Company, and consider what are the prospects for immigration to California as against Washington and Oregon. Lack of time prevents a further argument by me of this question, except to say that the basis of four thousand dollars per mile is a very liberal allowance as exemption from the application of the proposed tariff. A majority of the small independent lines of the whole country it will be found earn less than that amount, and yet meet their obligations, while many of them have a surplus afterward, being conclusive evidence that the whole argument against the four thousand dollar limit is based on false premises. I would further state that in none of the States, so far as I am aware of now, where rates are fixed by law, is any exception made in favor of the local roads, while in almost all cases conditions of competition, either between carriers or upon commodities, renders it necessary for them to compete with the larger systems of road. I submit reference to a few of the smaller roads, hurriedly selected, and without any effort to secure those which favor the argument I desire to set up. They are as follows:

Louisville, Evansville, and St. Louis, 359 miles; gross earnings, \$3,975 36 per mile; operating expenses, 64.38 per cent.

Louisville, New Albany, and Corydon, 12.5 miles; gross earnings, \$1,244 per mile; operating expenses, 65 per cent.

Chicago and Fort Madison, 45 miles; gross earnings, \$556 70 per mile; operating expenses, 80 per cent.

Chicago, Iowa, and Dakota, 26½ miles; gross earnings, \$1,577 per mile; operating expenses, 90 per cent.

Chicago, Kansas City, and Texas, 20 miles; gross earnings, \$1,343 per mile; operating expenses, 85 per cent.

Cincinnati, Georgetown, and Portsmouth, 42 miles; gross earnings, \$1,645 80 per mile; operating expenses, 80 per cent. Paid interest on bonds and had \$36 19 balance.

Cleveland and Marietta Railroad, 104 miles; gross earnings, \$3,430 57 per mile; operating expenses, 71.11 per cent. Paid all obligations, interest on bonds, and had surplus \$42,623 02.

Such examples can be produced without limit, where the business is done on a legitimate basis and with a view to development of the resources of the country served by them.

Notwithstanding technical objections raised by those opposed to this measure, as to the practicability of the scheme, I will say the plan, so far as the tariff goes, is nominally the same as is in general use in the territory where there is much less discrimination than is practiced here in California, and with a disposition on the part of the carriers to put in effect an intelligible system of tariff, the plan will work admirably.

There has been no argument advanced by the carrier up to this time which shows any sincere desire on his part to treat this question equitably, nor can any be produced which will show that the present basis is equitable, nor can any be produced, because equity is not one of the elements which enter into the present plan upon which the transportation business is conducted in this State. Time forbids an argument of the case of the Commission. I will only say they have failed utterly in the performance of their obligation in every particular as provided by the law. So far as can be discovered they have done absolutely nothing which has amounted to anything, which has not been submitted to them for ratification by the carriers. The system is certainly wrong which admits of a possibility of such dereliction of duty by any servant of the people.

Very respectfully,

J. S. LEEDS.

CAPITALIZATION PACIFIC SYSTEM,

Exclusive of the Oregon lines; also excluding the United States Government obligations of the Central Pacific.

SOUTHERN PACIFIC OF CALIFORNIA, 1,474.54 miles.

Funded debt (bonds)	\$47,375,000 00, or	\$32,128 67 per mile.
Capital stock	65,135,900 00, or	44,173 30 per mile.
Total	\$112,510,900 00, or	\$76,301 97 per mile.

CALIFORNIA PACIFIC, 115.44 miles.

Bonds	\$6,825,500 00, or	\$59,126 00 per mile.
Capital stock	12,000,000 00, or	103,950 00 per mile.
Total	\$18,825,500 00, or	\$163,076 00 per mile.

NORTHERN RAILROAD OF CALIFORNIA, 390.38 miles

Bonds	\$9,919,000 00, or	\$25,408 00 per mile.
Capital stock	12,896,000 00, or	33,026 00 per mile.
Total	\$22,815,000 00, or	\$58,434 00 per mile.

SOUTH PACIFIC COAST, 104 miles.

Bonds	\$5,500,000 00, or	\$52,884 00 per mile.
Capital stock	6,000,000 00, or	57,692 00 per mile.
Total	\$11,500,000 00, or	\$110,576 00 per mile.

NORTHERN CALIFORNIA RAILROAD, 53.6 miles.

Bonds	\$945,000 00, or	\$17,600 00 per mile.
Capital stock	1,280,000 00, or	23,835 00 per mile.
Total	\$2,225,000 00, or	\$41,433 00 per mile.

CENTRAL PACIFIC (Exclusive of Government obligation), 1,360.26 miles.

Bonds	\$73,930,000 00, or	\$54,349 00 per mile.
Capital stock	68,000,000 00, or	50,000 00 per mile.
Total	\$141,930,000 00, or	\$104,349 00 per mile.

SOUTHERN PACIFIC OF ARIZONA, 388.10 miles.

Bonds	\$10,000,000 00, or	\$25,773 20 per mile.
Capital stock	19,995,000 00, or	51,533 50 per mile.
Total	\$29,995,000 00, or	\$77,306 70 per mile.

SOUTHERN PACIFIC OF NEW MEXICO, 171.06 miles.

Bonds	\$4,180,000 00, or	\$24,444 00 per mile.
Capital stock	6,888,800 00, or	40,285 00 per mile.
Total	\$11,068,800 00, or	\$64,729 00 per mile.

TOTAL CAPITALIZATION (Exclusive of Oregon, Arizona, and New Mexico), 3,498.24 miles.

Bonds	\$144,494,500 00, or	\$41,305 00 per mile.
Capital stock	165,311,300 00, or	47,255 50 per mile.
Total	\$309,805,800 00, or	\$88,560 50 per mile.

SAME EXCLUDING CENTRAL PACIFIC, 2,138 miles (all California).

Bonds	\$70,564,500 00, or	\$33,005 00 per mile.
Capital stock	97,311,300 00, or	45,515 00 per mile.
Total	\$167,875,800 00, or	\$78,520 00 per mile.

NEW MEXICO AND ARIZONA COMBINED, 559.16 miles.

Bonds	\$14,180,000 00, or	\$25,366 72 per mile.
Capital stock	26,888,800 00, or	48,092 68 per mile.
Total	\$41,068,800 00, or	\$73,459 40 per mile.

Southern Pacific of California—earnings, \$9,279,822 50 (\$6,611 54 per mile); net, \$3,851,547 85; operating expenses, 58.50 per cent.
California Pacific—earnings, \$1,528,747 72 (\$13,242 79 per mile); net, \$759,525 09; operating expenses, 50.31 per cent.

Northern Railway of California—earnings, \$2,914,444 34 (\$7,465 66 per mile); net, \$1,375,131 31; operating expenses, 52.82 per cent.

South Pacific Coast—earnings, \$1,107,772 87 (\$10,651 66 per mile); net, \$393,807 54; operating expenses, 64.45 per cent.

Northern California Railway—earnings, \$95,824 26 (\$1,787 68 per mile); net, \$8,333 49; operating expenses, 91.30 per cent.

Central Pacific—earnings, \$16,629,104 36 (\$12,244 76 per mile); net, \$7,407,354 90; operating expenses, 55.40 per cent.

Southern Pacific of Arizona and New Mexico—earnings, \$3,077,947 58 (\$5,506 16 per mile); net, \$1,023,322 84; operating expenses, 66.75 per cent.

Oregon Roads—earnings, \$2,302,650 24 (\$3,502 87 per mile); net, \$390,118 80; operating expenses, 83.06 per cent.

Pacific System, except Oregon, Arizona, and New Mexico—3,498.24 miles.

Southern Pacific of California

California Pacific.

South Pacific Coast.

Northern Railway of California—earnings, \$31,553,716 05 (\$9,020 45 per mile); net, \$13,805,700 18; operating expenses, 56.25 per cent.

Northern California.

Central Pacific.

Same, excluding Central Pacific—2,138 miles.

Southern Pacific of California.

California Pacific.

South Pacific Coast—earnings, \$14,926,611 69 (\$6,981 57 per mile); net, \$6,388,345 28; operating expenses, 57.20 per cent.

Northern Railway of California.

Northern California.

Whole Pacific System—earnings, \$37,010,078 16 (\$7,856 10 per mile); net, \$15,201,282 94; operating expenses, 59 per cent.

Atlantic and Pacific System, 6,375.53 miles—earnings, \$50,449,815 88 (\$7,913 07 per mile); net, \$19,286,203 94; operating expenses, 61.77 per cent.

Comparison: Atchison, Topeka, and Santa Fe Railroad Co., 7,124 miles—earnings, \$36,438,188 97 (\$5,114 57 per mile); net operating expenses, \$11,227,255 15; 69.19 per cent. Missouri Pacific Co.—(\$4,965 81 per mile); operating expenses, 70.96 per cent.

Rate per Ton per Mile.

Southern Pacific Company, Pacific System, through freight ..1.119 cents per ton per mile.
Southern Pacific Company, Pacific System, local freight2.699 cents per ton per mile.
Southern Pacific Company, Pacific System, all freight1.835 cents per ton per mile.

Local 226.6 per cent of through or more than two and a quarter times as much.
Atchison, Topeka and Santa Fe System, all freight1.219 cents per ton per mile.
Atchison, Topeka and Santa Fe System, difference616
Missouri Pacific System, all freight1.024 cents per ton per mile.
Missouri Pacific System, difference811

Engine Statistics.

Miles run per ton of coal, Southern Pacific Company29.74 miles; cost per ton, \$5.79
Miles run per ton of coal, Atchison, Topeka and Santa Fe ..26.12 miles; cost per ton, 2.11
Miles run per ton of coal, Missouri Pacific25.43 miles; cost per ton, 1.35
Tons of freight carried per train, Southern Pacific Company124.63 tons.
Tons of freight carried per train, Atchison, Topeka, and Santa Fe118.84 tons.
Tons of freight carried per train, Missouri Pacific161.18 tons.
Pounds of coal used by road per mile run by locomotive, Southern Pacific Co.56 lbs.
Pounds of coal used by road per mile run by locomotive, Atchison, Topeka, and Santa Fe108 lbs.
Pounds of coal used by road per mile run by locomotive, Missouri Pacific93 lbs.
Gross cost of coal to Southern Pacific Co.\$3,300,890 58, or 84 per cent of gross earnings.
Gross cost of coal to A., T. & S. F.2,858,402 24, or 7.8 per cent of gross earnings.
Percentage of empty to loaded cars moved, Southern Pacific Company24.79 per cent.
Percentage of empty to loaded cars moved, Atchison, Topeka & Santa Fe ..28.32 per cent.

Passenger Rates.

Southern Pacific Company, exclusive of ferry and suburban, per mile2.50 cents.
Atchison, Topeka, and Santa Fe, exclusive of ferry and suburban, per mile ..2.39 cents.
Distance traveled, Atchison, Topeka, and Santa Fe65.91 miles.
Distance traveled, Southern Pacific Company68.2 miles.
Average receipts per passenger, Southern Pacific Company\$1 704
Average receipts per passenger, Atchison, Topeka, and Santa Fe1 57
Southern Pacific Company, ferry and suburban number of passengers carried in one year, 11,845,443—earnings, \$1,121,763 45. Average distance traveled by each passenger, 9.6 miles; average receipts for each, 9.47 cents.
Local passengers, Southern Pacific Company, pay 2.73 cents per mile, excluding ferry, suburban, and through.
Interest paid on funded debt, Southern Pacific Company, Pacific System, \$8,675,587 42; funded debt, \$144,494,500, or \$41,305 per mile of road.

Now, Mr. Chairman, there was a document prepared by Mr. Leeds summarizing and placing in condensed form the figures which he used in his opening statement to the committee, and which has been filed with your Secretary, but I have a separate copy here, and if the members of the committee care to have it, outside of the Secretary, I shall be happy to afford it to you.

MR. EARL: When was that filed?

MR. BARRY: It was some time before Mr. Leeds' departure for the East. Mr. Kavanagh received it, I think, and lest it may be mislaid,

I take the liberty of replacing it. The items, the figures, the facts, are summarized by Mr. Leeds, if I may direct the attention of the committee to it, as to the funded debt and capital stock of the various branches of the Southern Pacific system, and showing the capitalization. Your committee remembers the figures that were read before you, and their intent, for instance:

The Southern Pacific of California, distance 1,474.54 miles, has a funded debt of \$32,128 67 per mile, and has a capital stock of \$44,173 30.

Now, the California Pacific, with 115.44 miles, has bonds (not reading the aggregate, but simply the amounts per mile) of \$59,126 per mile, and a capital stock to the extent of \$103,950 per mile, making a total capitalization for each mile of that road of \$163,076.

The Northern Railroad of California, 390.38 miles, has capitalization of \$54,434 per mile.

The South Pacific Coast, which was obtained from Senator Fair, has now, under the administration of the Southern Pacific Company, a capitalization of \$110,576 per mile. It is hardly necessary to say that Senator Fair never received any price like that per mile for his road.

The Northern California Railroad is capitalized at \$41,433 per mile.

The Central Pacific, exclusive of the Government obligations, of the mortgages of the Government, should the necessity arise of paying back some of its indebtedness to the Government, has a capitalization of \$104,349 per mile.

The Southern Pacific of Arizona, 388.10 miles, has \$77,306 77 capitalization.

The Southern Pacific of New Mexico, 171.06 miles, has a capitalization of \$64,729 per mile.

A total capitalization, exclusive of Oregon, New Mexico, and Arizona, and covering a distance on this system of 3,498 miles, and which is the one we so often refer to, has \$88,560 50 per mile for this system of roads.

Excluding the Central Pacific, the capitalization would be \$78,520 per mile.

New Mexico and Arizona combined, with a distance of 559.16 miles, has a capitalization of \$73,459 40.

The earnings, briefly, are as follows:

The Southern Pacific of California earns nine millions and over, which is an aggregate—which is an average per mile of \$6,611, as gross earnings. Its net earnings for the whole distance are \$3,851,547, and its operating expenses are —

(These figures are not correct—they are manifestly incorrect—the copyist has evidently made a mistake; it reads 85 per cent. It is probably 58.85 per cent.)

The California Pacific has earnings of \$1,528,747; gross earnings per mile, \$13,222 79, and has operating expenses of 50.31 per cent. The operating expenses of the Southern Pacific of California are 58.50 per cent.

Northern Railway of California has gross earnings of \$7,465 66 per mile, and has net earnings of \$1,375,131, and operating expenses, 52.82 per cent.

The South Pacific Coast had gross earnings per mile of \$10,651 60; has \$393,807 54 net earnings; and has 64.45 per cent as operating expenses.

The Northern California Railway earns \$1,787 68 gross per mile; it

has net earnings on the whole road of \$8,333 49, and its operating expenses 91.31, per cent.

The Central Pacific has gross earnings per mile, \$12,644 76; has operating expenses, 55.40 per cent, and has net earnings, \$7,107,354 90.

The Southern Pacific of Arizona has \$5,506 gross earnings per mile; has net earnings, \$1,023,322 64; operating expenses, 66.75 per cent.

The Oregon roads have \$3,502 87 gross earnings per mile, and have net earnings of \$390,118, and operating expenses of 83 per cent; which clearly establish, Mr. Chairman, the fact that the Southern Pacific roads operating within California are actually supporting and contributing to the revenue of the Southern Pacific of Arizona and New Mexico and the Oregon roads, and the people of California are paying for the burden and responsibility of railroad development in those two neighboring States.

EARL: Colonel Barry, in reading that, you say the Oregon roads, for instance, the earnings are so much, and the rate per mile so much, and you say the net earnings are so much. What do you mean by net earnings? A. Net earnings on the whole road, Mr. Chairman. The difference between the operating expenses and the gross earnings is the net earnings. We have not given the operating expenses in amount; we have simply given the percentages. The difference between the operating expenses and the gross earnings would give the net earnings; in other words, if you choose to take that last figure there, 83 per cent, being the operating expenses, the total gross earnings being \$2,302,650 24, 17 per cent, which would be the remainder, is the net earnings, you see, would be just about equal to \$390,118, which is the net earnings.

EARL: That would not be paying the fixed charges? A. No; well, it is paying the fixed charges, all except the interest on the debt.

Q. Paying taxes and other expenses, that are not included in operating expenses? A. No, sir; not taxes.

BURKE: They do not put in taxes, because they do not pay them, is not that it? A. No; yes, that is the reason, I suppose, Mr. Burke. That is my impression; you merely suggested it, and I suppose it is correct. That is Mr. Burke's suggestion.

Now, the Pacific System of California, I mean the Southern Pacific system, excepting Arizona, Oregon, and New Mexico, has a total mileage of 3,498.24 miles; consisting of the Southern Pacific of California, the California Pacific, the South Pacific Coast, and the Northern Railway of California; and its gross earnings are \$31,555,716 05; and its gross earnings per mile are \$9,020 45; and the net earnings for that combination are \$13,805,700; and the operating expenses are 56 per cent of the gross earnings.

Excluding the Central Pacific, with its distance of 2,138 miles, the remaining roads, the California Pacific, the South Pacific Coast, the Northern Railway of California, and the Northern California, earned \$14,926,611 69, with an average of \$69,181 77 per mile; and the net earnings are \$6,388,345 28, with operating expenses of 57 per cent of the gross earnings.

The whole Pacific System, then, has a gross earnings of \$37,000,000 and over, with gross earnings per mile of \$7,800 and over; and with net earnings of \$15,000,000 and over; and operating expenses of 59 per cent.

The Atlantic and Pacific System, within the same jurisdiction, under

the same conditions—that is to say, taking the total mileage of 6,375.53 miles—has a gross earnings of \$50,449,815 88; and its earnings are \$7,913 07 per mile; and it has a net earnings of \$19,286,203 91; and its operating expenses are 61.77 per cent.

The Atchison and Santa Fe—that is the Atchison, Topeka, and Santa Fe Railroad—with a distance of 7,124 miles, has earnings of \$36,438,188 97, and its earnings per mile was \$5,114 57, being over \$2,000 less than the whole Pacific System, and its net earnings are \$11,227,255 15; so that the gross earnings only—less than a million less than the whole Pacific System—in fact of only half a million, the difference in favor of gross earnings for the whole Pacific System being half a million over the Atchison, Topeka, and Santa Fe, the Central Pacific has the benefit and advantage on net earnings of \$4,000,000.

The Missouri Pacific Company has an average earnings—of gross earnings—of \$4,965 81, and its operating expenses are 70 per cent and over.

There is more, following up this, Mr. Chairman. I will not take the time of the committee further, as it is possible for you to follow out and look over at your leisure. There is here a showing that on rates per mile, on engine statistics, tons of freight carried per train, pounds of coal, gross cost for coal, etc., percentage of empty to loaded cars, passenger rates, and all of those matters that are necessary and proper elements in determining the question, that if anything, the advantage in all these matters is in favor of the Southern Pacific system as against similar roads in the East.

EARL: Colonel Barry, from what source did you get these figures?
A. They were taken from Poor's Manual.

Q. Well, the Missouri Pacific, you say, is \$4,965 81; is that it? A. Yes, sir. That is from Poor's Manual, also. Poor's Manual, I may explain, Mr. Chairman, contains full details and statements, received everywhere as correct on the part of all railroads with reference to all these matters. Now, Mr. Chairman, this discussion that has been going on before the committee for some time, in the main is wholly foreign to the principal object of this constitutional amendment now before the committee; and what is really the proper subject for discussion, as of most importance to determine any action on the part of this committee. I shall endeavor to show you, Mr. Chairman and gentlemen of the committee, that the establishment of a tariff rate in the interim between the adoption of this constitutional amendment and the action of the Legislature was merely an instance to this legislation, and not its main character. A moment's reflection will enable you, gentlemen of the committee, to understand why the force and strength of the opposition has been placed upon the incident and not upon the principle of it. The principal object of this constitutional amendment, Mr. Chairman, is to get rid of the Railroad Commission of the State of California. Get rid of it, because it is not fit to be imposed upon the people of this State, or even permitted to hold office and receive salary from the State; and in every clause of this measure—in its central character, as originally constructed—the Constitution of the State of California in this particular was monstrous and absolutely destitute of good sense, and without any support in any other State in the Union.

It was in line, Mr. Chairman, if I may be permitted briefly to go over some facts which we forgot, that all the railroads in the State of Cali-

fornia had ever done in connection with this subject, from the time when the growing roads, from 1862 on, gradually extended themselves over the State, that all legislation which we have ever had on the statute books of the State of California was a law passed in 1861 that there should be made a report to the Secretary of State in reference to certain matters by railroad corporations, and that was all that it was necessary for them to do. That was about the only provision that the laws of the State of California carried up to the time that the first transportation committee was established here, up to the time that by the Act of 187—I will ask your indulgence for a minute, Mr. Chairman. Mr. Chairman, in the Act of May 20, 1861, to be found in the Statutes of 1861, page 601, were the only provisions in reference to a railway system in this State that at all pretended to make any provision for the people for the regulation of railway freights and fares; and that was, they made an annual report to the Secretary of State, which none of them ever complied with or paid any attention to, and next or subsequent section or paragraph, the maximum, which so far as prevailed in the State of California, ten cents per mile for passengers and fifteen cents per ton for freight, was established; and notwithstanding the efforts of the people, as shown in the Archer bill, and the Freeman bill, and other bills of that character, it was not until the third day of April, 1876, after fourteen years of struggle, that the railroad company gave us one of its Dead Sea apples, one of the effects of continuous and ——— legislation, which is so often now extended to the people of the State of California, since it gave us a Board of three Railroad Commissioners, that were to last for two years; these Railroad Commissioners were men of the very highest character, and I say it without fear of contradiction, the best Railroad Commission the State of California has ever had, consisting of John T. Doyle, Isaac W. Smith, and Governor and General Stoneman.

The Commission entered upon its duty; it served notice upon the railroad that it desired certain information the Act called for. This Act, Mr. Chairman, was modeled upon most modern ideas of the great States that had been successful in their contests with railroads. It avoided the extreme form which has often been called the Western or violent idea, which prevailed in Iowa and Illinois for awhile, and it was formed upon the more lenient, more genial and kindly method of Massachusetts, and those other States that relied upon public sentiment and public opinion, and achieved results of the proper character; appealing to the sentiment of decency, if any there existed in railroad corporations; appealing to the sense of justice, if any one could ever cause it to arise; and gentlemen, what did they do?

They refused to comply with the request of the Commission; they denied their authority, and when taken into Court and it was determined by the Judge of the Third District Court that a mandamus would apply against them, and they would be compelled to comply with this statute, they went to the Supreme Court of the State and the appeal was pending in the Supreme Court of the State when the so-called Grangers decision, in the Supreme Court, was the handwriting on the wall to these people, and then, to this extent, they complied with the requirements of the Commission; complied in words, but not in acts; promised to send reports, reports which for some extraordinary reason never materialized; and when that Commission was abolished two years

afterwards by the succeeding Legislature, that appeal was still pending, and they were still defiant of the authority of the Railroad Commission.

When these Commissioners came to the Legislature and made their report, that Legislature refused to give them any assistance, and that was the Legislature which, in derision of the people, repealed this Board of Transportation Commission because their personnel was unsatisfactory, and substituted another and single Commissioner with nearly all the powers, although some extension was made; and, at the same time, in 1878, in April, they passed that amendment to the law, wiped out that Commission, and gave a new Commission, consisting of a single Commissioner of Transportation. They also adopted a call for a Constitutional Convention to come together the same year, which Constitutional Convention, carrying out certainly the hopes, if not the wishes, of the Southern Pacific Company, and the Central Pacific Railroad Company, formed a method of reaching and controlling these roads that had been repudiated through the Union, appointed an irresponsible Commission that was above the law, and that against the protests and rights of the people. They thus having made this creature, they pretended to fear they would be rent and torn by this Frankenstein, this bogie, this monster; they thus pulled, and puffed flame and fire through him to scare the people of the State apparently, and thus stood aghast at their own oppression.

Since that time, gentlemen that have come here, and during the whole of this discussion, they have not told you once there is no such Commission as that in existence in the United States, and there was not then at that time among all the other States of the Union, and there are many of them that have Railroad Commissions, and had then. I call your attention to the fact, Mr. Chairman, that in the report of this very Railroad Commissioner, B. F. Tuttle, as Transportation Commissioner appointed under the Act of 1878, in his first report to them, to the Legislature and to the people of the State, he called attention to the fact that out of seventeen States in the Union that at that time had Railroad Commissions, there was but one State, and that was Illinois, that gave the absolute right of fixing rates for freights and fares absolutely. That the States either as a class resorted to the Courts for the method of enforcing the decrees of the Commissions, or that they relied on public sentiment and appealed to the common sense of the railroads and to the great force of public opinion that would stand by the right and truth if the people maintained it. And now, gentlemen, it was under these auspices and these circumstances that this Railroad Commission of ours was ingrafted on our Constitution, fixed there in all its enormity, so that we have to come when we desire to get rid of it to appeal to the Legislature and obtain against this powerful influence in legislation, feared by every one who has tried to stand up against it; we have to appeal against the insidious methods of this Commission to get two thirds of your votes for the proper privilege of going and asking the people of California whether they are dissatisfied with this organic law wrung from them by fraud and imposition. Why, gentlemen, what could be expected from a measure that was originated in that way? What could we expect from a constitutional provision of that character, inflexible, indurated into the Constitution and requiring so much labor to get rid of it?

How could we expect to prosper alongside of those other States that

in wisdom had created their Commissions by legislative Act, so that the same hand that created them could also destroy them, and as the people felt the necessity for amendment and change, extension or repression, for giving ampler authority to the Commission or relying more on the Courts than simply the blind fiat of a few men, there was still power on the part of the Legislature to accomplish something? But here, with us, that Legislature has been tied hand and foot, and we have nothing upon our statute books, when the whole series of the States in the Union have most beneficent and wise provisions in reference to legislative control; provisions that enable the people to have depots when insufficient accommodations are given to them; provisions that compel the roads to make proper crossings, to keep their tracks in proper repair, to continue the roads in operation after they acquire them, rather than buy them solely to destroy them; to make proper bridges, and in a thousand ways, even to the very extent of compelling them to carry hatchets in case of fire, and other paraphernalia and implements of use, so that they may be provided with some means at least to secure the safety of those who travel. In the most minute details, the most practical legislation in the States of the Union, with the exception of California, and even in the civilized world, they are certainly liberal and appreciated both by the railroads and the people.

SEAWELL: Excuse me in bothering you, now don't you think that it is a pretty good reason for keeping this Constitution? A. Yes, sir; but I think we ought to abolish the Railroad Commission. I am talking about abolishing the Commission, and that is the real subject at stake here and of equal importance for you gentlemen in taking up matters concerning the progress of California, for the fact remains that this Railroad Commission is against the progress of California. Restore the power to the Legislature to do something.

EARL: Your idea is if the clauses of the Constitution were abrogated as to the Railroad Commission and its powers, that the Legislature could then by legislative enactment, if this amendment were carried, provide for a Commission here as in Eastern States? A. Yes; that is about it.

Q. But it reads: "The Legislature shall have the power and it shall be its duty to establish rates of charges for the transportation of passengers and freight by all railroads operated in the State, and to enact such laws as may be necessary for the enforcement and carrying into effect such rates." It says, it shall be its duty. I don't see how they could delegate the power to any one else. A. I would like to call your attention, Mr. Chairman, to the fact that the subject was very fully discussed before the Transportation Commission, consisting of all these Boards of Railroad Commissions of the Union.

SEAWELL: We don't want to break into your argument or idea. A. Well, I just wanted to answer Mr. Earl's question, because it is much better now. After the meeting of the various members of the State Commissions with the Interstate Commerce Commission last year, and a very lively discussion, by a vote of 24 to 7—and these men are perhaps the best informed on this subject in the United States—the various Railroad Commissions and the Interstate Commerce Commission—it was adopted as an expression of sentiment on their part that it is within the power of Congress and the State Legislatures to delegate the power of reasonable regulation to Boards of Commissions; and whether they are—

EARL: That was not exactly the point. By the decision of the Dougherty case, as laid down in this State, when the Constitution says the Legislature must do a thing it must do it. It cannot delegate to any Commission, or Board of Supervisors, or anybody else—

A. That is not my impression in relation to a Commission fixing freights. In the report to the Legislature of the original Transportation Commissioners, such legislation is suggested as the Legislature can act upon afterwards. It would not be necessary in case the committee did not see fit to directly authorize the Legislature. If the committee should not be of the opinion that it would be wise for the Legislature to endeavor to fix rates, it would not be necessary for the investigation to take place in the Legislature; but a Commission could be appointed to gather facts and statistics and make a recommendation, just as do the Commissions in Massachusetts and Michigan. They have no power to make rates; nor in New York; or lower rates. It can hear complaints and refer them to Courts, and make recommendations to the Legislature. Nearly all legislation in Massachusetts since 1884 has been made in consonance with and in direct execution of the suggestions made by the Railroad Commissions from time to time, as to proper amendments in the law; but I will come to that again, Mr. Chairman, if you will indulge me one moment.

Therefore, I say, Mr. Chairman, it is not at all singular that the real object of this bill, in its great relations to the people, has been entirely obscured in this discussion and this position of Mr. Johnson, who laid out in his argument and stated that he did not believe there was any general public demand for the removal of the Railroad Commission, or the change of this law, and who, in some manner, which I cannot understand the force of, ridiculed and commenced to talk about legislation of a private character as opposed to general legislation and general laws; that we should not change our Constitution in this regard, because, in some way, it would be making a special case of it, and the people would be going back of the general proposition.

Now, Mr. Chairman, this constitutional provision provides first in reference to the Railroad Commission, and no one supported the idea that the people, after fourteen years of bondage, do not wish to do away with this Commission. For fourteen years we had something different from anybody else, and having derived no benefit from it, it is about time that we provide a Commission more in accordance with the wisdom expressed by those in other States. Therefore, I say, Mr. Chairman, I trust and believe, that after the knowledge you have of what the State of California demands—now, I do not mean any senseless clamor, any talk on the street corners, nor voicing any expressions in the journals, except in so far as they may embody and typify the patriotism and intelligence, hopes, and aspirations of California. It is not to those things I allude.

Now, I say you recognize the demands of California; you recognize that she, unprogressive, loitering behind in the march of progress on this western shore, notwithstanding her enormous advantages, her wealth, her grandeur, that in forty years she has grown so little, and Washington, and the Dakotas, and all those other States are leaving her in the lurch; that is the situation, gentlemen, and that is the demand I hope you will listen to; and looking across this State of ours, give to the people the first section of this law. Repeal these two provisions that

provide for that Railroad Commission. I trust that the sentiment of the committee will be unanimous on that point.

Now, Mr. Chairman, next after that—I am taking the bill—it was thought wise, Mr. Chairman, that the Legislature, as in many States of the Union, should fix a maximum rate of tariff. As a matter of fact, nearly all the States of the Union, either through their Courts—that have Commissions—either through their Courts or the Legislature, do carry out what we have laid down here as the duty of the Legislature. There are, Mr. Chairman, nineteen States and Territories of the Union that in 1891 had no Commission; of those, two, I may say in passing—that of those nineteen, two, Delaware and Florida, after having Commissions in use, had abolished them by legislative enactment. Texas, which passed a constitutional amendment in 1891, which, Mr. Chairman, is in some respects similar to what has been suggested here in this committee—and which, in fact, in some respects, was modeled after it—passed in 1890 the following provision to its Constitution:

“Article II: Railroads heretofore constructed or which may hereafter be constructed in this State, are hereby declared public highways, and railroad companies, common carriers. The Legislature shall pass laws to regulate railroad freights governing railroad business to prevent unjust discrimination and extortion.”

Although that is a constitutional provision of Texas, Texas has not as yet seen fit to adopt the Railroad Commission, and it manages to make the railroads behave themselves in that State with the authority of the Legislature. Now, of the States that have Railroad Commissions, twenty-eight in number, twenty of them in one form or another, actually fix the rates—either maximum, as in some of the States, like Illinois or Iowa, or absolutely, as in many of the States—and ten of those States of the twenty, in one form or another, legislate through their Commissions and prescribe rates for their railroad organizations; ten of those States make those rules and regulations subject to ratification by the Courts.

MARTIN: Did I understand you to say that Texas had no Railroad Commission? A. Not as I find shown in 1891; it may be so now. I was unable to find in the library here, any publication for 1892, and I had to rely on that last authority I could get, I had to take that for 1891; it may have been since; it may have been appointed since that time, Mr. Martin.

In these ten States where they fix the rates of charge, and absolutely impose them on the corporations, they all express in the statute that they are subject to examination of the Courts, and practically since the decision in the Minnesota case, I presume it will be understood that all rates of freights and fares as established by Commissions, whether so expressed in the organic Act or not, would be subject to examination by the Courts, if the charge were made that they were not reasonable rates, or whether through passion or prejudice. Now, then, Mr. Chairman, it being deemed wise to restore to California a position similar to that of certainly twenty-nine States in the Union, to operate through our Legislature in its channels, it was found that there would be an interim in this redress offered to the people through the constitutional amendment, for about two years, which could not be filled in except by calling a special session of the Legislature.

If the constitutional amendment, which, I say, is in substance the

contention of the Traffic Association here, which is most important, and which the interest of California demands, should it, at a special election, be adopted, coming in a few months from now—coming through the people—there would be until the next session of the Legislature, in 1895, the absolute maintenance and continuance of the present system, from which the people are suffering. Therefore, you can appreciate, Mr. Chairman, this State, which, after much discussion, it became necessary in some manner to provide some method of extending redress to the people; and, therefore, as I say, this maximum tariff—this tariff of the Western Traffic Association—is the understanding in this constitutional amendment. And if I have any force or any ability of expression, I desire to urge on this Commission that all discussion of this tariff, and all the facts and figures appearing here, have certainly had the appearance of avoiding the main controversy by the railroad company, which is: First, shall you abolish the Railroad Commission, as fixed by the Constitution, and, secondly, shall we give to the Legislature the right to fix freights and fares? And then, in order that the people shall not be detained and kept away from this benefit, we have, we believe, provided a just and proper method.

Now, Mr. Chairman and gentlemen, I presume—and I shall not indulge in very much discussion of it—from the objections which have been urged to this measure, which is simply temporary, and your committee will understand a mere incident to the legislation promised the people, because even if the Railroad Commission were impeached and the Legislature authorized to take this subject under its control, the omission of any further action on the part of the Legislature would, I think, in view of the great boon that they had conferred on them in doing so much, would not be viewed in any censorious spirit; but, if in addition to this great boon, the people could get the great benefit of it, then whatever stricture and whatever ridicule may be put forth to drive away from the real subject in this incident, why, we care nothing about it. We are anxious to say to you that we believe, if the committee will indulge in a few moments' reflection on this subject, it will be observed we are urging no other method but to give, in the interim during which this Commission was abolished, and the meeting of the Legislature, some regulation for the railroads in California. It was necessary somewhere to establish maximum rates; it was necessary to do something. Is there anybody in California who believes that the Commission ought to be abolished, who believes it is wrong in its present personnel and consequently wrong in its origin, and perhaps also that the Legislature can be better intrusted with this matter than this Commission, will he not only believe, but that there must be a demand for these things, and that that demand cannot be postponed for two years?

EARL: Well, Colonel, is it the idea that the Legislature could fix different rates than those prescribed in the so-called Distance Tariff? A. Yes, sir.

EARL: You mean less but not more? A. I think they could fix less; and I think by changing the classification, and making the classification flexible, I believe they could make higher rates.

EARL: It says in the amendment the Legislature has "no power to prescribe rates of charges for the transportation of passengers on any railroad or system of railroads whose gross annual earnings are more

than \$4,000 per mile to exceed 3 cents per mile; and *provided further*, that the Legislature shall have no power to prescribe the rates of charges for the transportation of freight on any railroad, or system of railroads, whose gross annual earnings are more than \$4,000 per mile, to exceed the rates specified by the California Distance Tariff, as in this section set forth." How can the Legislature under the language of this Act there, where it is expressly declared it shall have no power to prescribe in excess of this — A. No, sir, not in excess of 3 cents per mile, nor the California Distance Tariff rates, I do not think so.

Q. So you put the power in the Legislature and make it different in other States? A. There are a number of States where the maximum rates, Mr. Chairman, are in the Constitution.

Q. No, sir; no, sir — A. I think there are one or two.

MR. MARTIN: You say there is one? Which one? A. I think there is; think there is one State in the Union has a constitutional provision in reference to passenger but not as to freight. But that, Mr. Chairman, that brings us back to this point that we desire to obtain a measure of relief that must be self-executed in the Constitution. If the Legislature, as it did very frequently in time gone by, refuse to act at all, after all this agitation, we would simply have got rid of the Railroad Commission.

EARL: But, you were saying the matter presented here by these railroads in opposition to this amendment was not germane to the main features; was not germane and pertinent in itself, and material to the general matters. If the maximum rate prescribed in this California Distance Tariff is burdensome on these roads, if it is wrong, and they shall come in and show the fact? A. That would make no difference, Mr. Chairman, as to the main idea, that the Railroad Commission be abolished and the Legislature should be vested with authority. If it should be in the judgment of the committee thought unwise for the Legislature to be clothed with so important a matter as the maximum rate, why that would not, of course, in any manner throw any light upon the necessity of abolishing the Commission.

EARL: What, but Colonel, if the maximum rates of freight, Colonel, were such as to be oppressively low on these carriers, are they not justified in coming in here and showing that fact, that this proposed schedule of tariff, this California Distance Tariff, is oppressive and burdensome in its nature, is not that showing highly pertinent and a good argument against the adoption? A. It is a good argument against the adoption of the incident to the constitutional amendment, but in no manner affects the main purposes of the constitutional amendment. I do not see if it was shown that it was any burden—that it is oppressive; but, as I said, the whole strength and force of this discussion so far has been on the mere incident, which I have endeavored to show to the committee came from the necessity first of abolishing the Commission, and the providing a method of legislative enactment, and for providing in the interim some redress. There are three ideas embodied in the constitutional amendment, each one separate and independent, and certainly the first two are more directly connected than the last.

Now, Mr. Chairman, it has been suggested by the Chairman, if the showing here was of the character spoken of, that it would be proper and pertinent. In the first place, there have been a number of objections made; some of them by roads which it was sought to pacify and

quiet. Why, there are only three railroads in the State of California that are earning more than \$4,000 a mile, as shown by the last annual report of the Railroad Commissioners of this State, also by Poor's Manual. It would seem as if those were the roads directly affected, and that all the other small corporations referred to were put forward here rather for the purpose of being the shoulder and bulwark of these three roads than from any interest they felt themselves.

EARL: You know this maximum of \$4,000 was not in the amendment as it came from the printer originally? A. Speaking now for the bill as it is at present, that was not in it before; it was suggested—this wise course was taken, when the departure was made, in the interest of the small roads. I say the main object of the endeavor should not escape. Now, these small roads have a degree of immunity and consideration that they would not receive in other States, where they must all conform to the general provision. Still, I say the very concession made them has been used as an argument against this measure, as indicating want of thought. I simply desire to say that it was simply on the ground of policy, so the people of the State of California would understand what was the aim and endeavor of this measure.

The small roads of the State of California have awakened to a degree of hostility; they have done very little to injure the people of California. Why, gentlemen, the real object of California's interest on this subject arises from the extortions of the Southern Pacific system; there is no need of disguising it, and there would be no such agitation in this State were it not for the continuous and oppressive disregard for the most ordinary consideration for the community in which it is transacting its business. If it was not for the absolute defiance of all that is good in politics and all that is just in law by this corporation, this measure would not be occupying your time here, and the great State of California would not be wasting the substance and the energy of its legislators in endeavoring to settle these complicated and difficult questions. Therefore, I say when every measure of relief extended to the people is used as a reflection upon this measure as indicating a want of thought in its formation and in its preparation, it is foreign to the subject. This measure, gentlemen, as I have said, is looked upon as the necessary consequence of other measures that were formed in due propriety, and it makes no difference, gentlemen, as to its propriety, if made at the last moment or the first moment.

Now, as to the fact, Mr. Chairman, the earnings of these roads—I shall say nothing about the Southern Pacific system—I say, very frankly, a road that is capitalized at \$88,000 per mile, and expects to pay interest upon it when it is actually in competition with systems that are capitalized at only \$44,000, or where, for instance, the excess of funded debt amounts to something like \$25,000 per mile—

EARL: You have heard the testimony, did you not, that the roads of the Southern Pacific system have paid no dividends in their history, excepting a slight dividend paid on the Central Pacific at one time.

A. Yes, the Central pays dividends.

Q. That the bonded debt of the roads in California does not exceed about \$30,000, or \$31,000, or \$32,000, whereas the Atchison road's bonded debt in Kansas is \$34,000, and \$37,000 or \$38,000, some of them, the rates now being such as not to pay dividends. Colonel, is it a correct statement to say that the capitalization is \$88,000 per mile, and that

we are expected to allow them to charge rates that will pay interest on that capitalization when they show that they do not pay more than their operating expenses and fixed charges? A. Oh, well, Mr. Chairman, they do pay considerably more than their operating expenses and fixed charges, because they have a very handsome net surplus here. Why should the people be compelled to pay interest on a road with capitalization of \$88,560 per mile, when it can be duplicated here, as Mr. Leeds says, for at least \$40,000 per mile, and where it is in competition with others, constructed upon a much simpler and better basis?

EARL: Would you take it as a basis, then, in figuring on the cost to duplicate the road? A. I desire to say, Mr. Chairman, that the principle upon which railroads are conducted and which is shown by the testimony of the Cashier of the then New York Central and Hudson River Railroad, and the management of the Michigan Central Road, at the same time, taken before the United States Senate Committee, which was investigating the question in 1875 or 1876 of transportation to the seaboard; he testified that their capitalization had nothing to do with railroad rates and charges, that the true principle on which all railroads were conducted—and a moment's reflection will show—is whatever the traffic will bear. If an article cannot afford to pay what is asked, it will not be transported, no matter whether the road cost \$10,000 or \$1,000,000 per mile, and they pay no attention to that element themselves; I say it is a mere myth, a fiction, and something for the purpose of confusing and disguising the real question; it is not a proper element of charge. If it cost the Southern Pacific Railroad Company \$120,000 per mile to construct it forty years ago, and a similar road could be built to parallel it for \$20,000 per mile—I say, Mr. Chairman, the Central Pacific Railroad Company has no more right to come and ask that the charges shall be made on its line on the basis of \$120,000 per mile than a grocer who bought provisions here and shipped them around by sea in 1849 and at that time retailed them at fabulous prices in those times, and who still has them in store, and says his customers must pay out so much for those things, with interest running up to this amount. Wouldn't you deem this an imposition upon the people, and one which they would not accept?

EARL: Colonel, you know the Interstate Commerce Commission has laid down, as an element or basis for fixing rates, the cost of the road—

A. I do not so understand it.

Q. Well, it is so. I have seen the reference recently myself. A. It says simply the value of the property; it does not say the capitalization.

Q. It says interest on the capital invested; that is the way it reads, Colonel. A. Well, gentlemen, the capital invested may be an element of that character in conjunction with other things. I question that that is the sole element of determination, Mr. Chairman. The true method of fixing railroad freights by themselves, is upon what the traffic will bear.

EARL: Well, Colonel, but when a State exercises the power of fixing rates, it is laid down by statute that the rate so fixed must be just and reasonable—just and reasonable, as determined by a rate fixed upon the cost of the plant itself—that is, the construction, the interest on the bonded debt, and a reasonable income—reasonable profit on the investment.

A. Mr. Chairman, the question is what would be the just capital; what would be the investment of capital here; what would be the method of determining the cost? I shall insist, I say frankly to the committee, I say there is no investment of capital in the line of the Central Pacific Railroad, or the Southern Pacific, other than that which is fictitious, and even if it were necessary to consider that cost, there is nothing to consider—nothing of that sort; they have simply gone to work and swelled the amount of it. Of course, it is not an element if this company has an exorbitant capital in comparison with similar roads. I want to say also that a reasonable rate as determined by the theory of railroad management internally, cannot be very different from a reasonable rate as determined by railroad management considered from the outside.

BURKE: Let me interrupt you, Colonel—

BARRY: I think, Mr. Chairman, the figures show conclusively—the figures we have shown here—of those roads constructed in the United States since the completion of this road, are meeting their just obligations, and are carrying freights at much lower rates than the Central Pacific. I say we are entitled to the benefit of similar considerations, and the mere fact, if it were true, that this road had paid so much more, should be of no consideration as against the other principle that a similar road could now be constructed for so much less, and we should have the benefit of the new investors rather than follow round the claims to a bad investment.

EARL: Would it not be a fair proposition to say to them, "Build a road, if it will cost less, rather than take other people's property, and, say, depreciate it one half?"

BARRY: I do not consider that we are depreciating their property, Mr. Chairman. We do not understand that, in comparing this system, with its extraordinary capitalization, with other systems, we are doing anything more than calling attention to a well-known fact in this State; a fact that was pointed out conclusively in the report of the first Transportation Commission ever organized here—that the system of expansion was indulged in. I was not going to speak about the Central Pacific, because I consider that matter will be finally disposed of elsewhere.

I propose to take up a road that has assumed a very extraordinary position here, which is fully understood by all of us. It occurred recently, and we know all about it. I propose to show that the San Francisco and North Pacific Railroad Company, in its claims that it is entitled to any consideration, is absolutely almost forgetting, I think, that it is only a few years ago that all these circumstances and facts happened that go to show that its position is absolutely untenable. Now, the Donahue and Cloverdale line, and the other lines owned by Peter Donahue, were in existence in 1878. They had a total mileage of one hundred and six miles, including the steamer route. Their earnings for that year—the consolidated road was opened July 1, 1876—were \$467,501 52, and their operating expenses, \$220,103 43, less than 48 per cent, as you will observe; and their net earnings were \$247,398 07. Their capital stock at that time was \$5,000,000, and it so appeared in their statement at that time. The paid up stock was \$3,750,000; their floating debt, only \$20,000 36.

On the other hand, they expended in construction \$2,871,503; for equipment, \$366,000; for other permanent investments, \$433,307 44; for

materials and fuel, \$31,500; for various accounts, \$25,888; and they had cash on hand of \$41,247. So that, in order to get the matter up to a proper position, they had a profit and loss account for only a few years' management of that road, with no bonded indebtedness at that time, and a floating debt of only \$20,000—they had \$638,606 on account. That was due to the management of Peter Donahue. That was due to the fact that the road was conducted on principles that made it profitable to them.

In 1888, ten years afterwards, just about the time he died, and when his system had not been destroyed, its earnings were then \$620,685; its operating expenses \$399,146, and its net earnings, \$221,539 53. At that time its profit and loss account had swelled up to \$1,235,547; when, in 1889, Mervyn Donahue (I desire to say nothing except what is kind) got control of the road and wished to absolutely obtain it for his own property, so bought out his family, he purchased those various roads. The mileage was then 166 miles; and although, as you have seen, of this value of \$5,482,070, there was only an original subscription of paid in stock of \$3,750,000, with, perhaps, \$200,000 in the Sonoma road. There was then \$1,235,247 charged to profit and loss. He issued stocks to purchase those roads to the extent of \$6,000,000, swelling it up about one third on the original investments, which represented the fruits of his father's accurate and correct management; but, not having the ready money, and the stocks not being available for sale, he issued bonds to the extent of \$4,000,000, so that that road represented, with its bonded debt and stock, \$10,000,000. Is it right that the State of California should be compelled to pay rates upon that sort of management?

EARL: When was the Ukiah branch built?

BARRY: The Ukiah branch was built in 1889. It was only extended from Cloverdale to Ukiah.

EARL: About thirty miles, is that?

BARRY: About twenty-eight miles; from twenty-eight to thirty miles. Well, gentlemen, they could have put silver ties all the way from Ukiah to Cloverdale for that \$4,000,000. The road has been sold recently, and was not sold on any such basis, through the Probate Court of Marin County, that is, for \$10,000,000. That was a fictitious value given to it for the purpose of floating bonds and of making rash and unwise extensions of the road that would not pay. I say this road that comes in here and says, although its earnings are \$6,000 a mile notwithstanding all those things, and which I shall contrast, gentlemen, to show how they do things under similar circumstances in the East. I shall take a road that in some respects very much resembles that road; a small road in Ohio, one hundred and sixty-four miles long—the Cleveland, Lorraine, and Wheeling Railroad Company, that runs from a point on the West Virginia side, up through northeastern Ohio up to the lake and to Lorraine, which is one hundred and sixty-four miles long. That road earned \$1,291,471 83; or it earned as gross earnings \$7,860 45 per mile; whereas, the North Pacific earned \$5,131 88. But the operating expenses of this road in Ohio—these roads that are run so much more cheaply than the California roads—those operating expenses were \$5,631 43, whereas the Donahue road is \$3,191 70; so that, although the Donahue road had only gross earnings of \$832,647 54, as compared with \$1,291,471 for the other road—a difference of \$400,000—the profits

or net earnings of the Ohio road were about \$366,225, as against \$314,795, or the \$400,000 had shrunk to \$355,000.

But, gentlemen, the Ohio road does not pay \$206,000 interest upon the funded debt, created in the manner as is the case in this other organization. Therefore, it put away for that year a surplus of \$275,012 out of a net earning of \$366,225, while this other road, out of a net earning of \$314,000, had a surplus of \$356,000. Why was the surplus so small here? Gentlemen, because of these \$4,000,000 of bonds, created in this manner and the origin of which I have not put out as fully as I might, for the reasons known to every one here. There is no reason, I say, that indicates that these gentlemen should be entitled to so much consideration as has been given them when coming with claims for the consideration of this committee.

Further, Mr. Chairman, I say that, in so far as the roads earning from \$1,200 to \$2,800, I think that a complete answer to their position is, first of all, that the comparative statement with similar little roads shows that similar roads did prosper under this tariff in other places; and, secondly, that if we could not get redress in any other manner from the injustices the Southern Pacific system is inflicting upon us, it would be cheaper for the Legislature to buy every one of these roads, so they may be removed from the problem, and so that we may stand face to face with the real antagonist in this case, unconfused and unconfounded with other side issues.

Now, Mr. Chairman, the proposition has been made here, leaving out of consideration the attack on these small roads, that this small road, which is now called a less than \$4,000 road, which, because it does not appear in the report, the Thirteenth Annual Report of the Railroad Commissioners, would have to stay there permanently, and that roads organized afterwards would not be affected at all.

I need not call your attention to the fact that that amendment introducing the Thirteenth Annual Report there as a basis, was not in the bill as presented; and while, at the suggestion of the author of the bill, or the introducer of it, it may be necessary, when criticism of that character is made, it can be determined that reports shall be made annually, as in Iowa, so that this thing will be very simple to overcome. That would, I think, where a provision is made that roads earning \$4,000 a mile shall be included, that the expression of such a classification carries with it the ability on the part of the Legislature to prescribe such methods of determining whether such \$4,000 road shall be included. I do not think there is anything in the point that, really, there was any necessity to introduce that provision in reference to the Thirteenth Annual Report. I think, whenever the road got \$4,000 a mile, there would not be any difficulty on the part of the Legislature afterwards in applying the proper tariff. It is said also, Mr. Chairman, that some of the classifications in this tariff are different from the Kansas classifications. Of course, I need not say to you, Mr. Chairman, nor to the very learned array of gentlemen representing the railroads, that I don't claim to be an expert on tariff regulations. I don't claim to understand all about the varied minutiae of charges—the varied minutiae of charges of different commodities, of the 5,000 of them, that enter into a tariff; but I do know that a classification system that is used in some portions of California, that is used generally in the regions west of the Rocky Mountains, cannot be such a dreadful thing as has been pictured here. I will also say that

the roads operating in the regions spoken of, managed with their operating expenses in every case higher in percentage than the California roads, to get along with these rates. It is quite possible that even with the difference in conditions—it is quite possible that these roads in California, benefited and privileged as they are, with lower operating expenses, should submit to the same tariff.

As far as this wine business in Napa is concerned, it is not necessary to say it is not any beneficent desire on the part of the railroad that fixes the rate, for, if Napa Creek did not exist, and if transportation by water did not afford the wine growers in that region some redress, I assure you they would soon find out that they were paying all the traffic would bear. I do not believe these little considerations should in any manner affect the general proposition.

It has also been suggested, Mr. Chairman, that the small road operated to-day by individuals, might fall into the possession of a large aggregation of roads. Well, if it did so, Mr. Chairman, it would do so with the full knowledge of this Constitution here, if it is adopted, and it would become part of that system, and it would be subject to the rules governing that system, and it would be subject to the rules governing that system and this classification, Mr. Chairman, is according to the character of the road, and not according to the ownership, because it does not depend on anything else except the fact that it don't make any difference who owns the roads, whether it is one corporation or otherwise; it is there. It in no manner conflicts with the United States Constitution or any other Constitution. It seems to me, Mr. Chairman, that, therefore, even if we consider that, from little difficulties, sometimes a road may not pay \$4,000 this year, and will the next year, those matters are very simply rectified by themselves. In answer, Mr. Chairman, finally, to this suggestion in regard to tariffs of this character, diminishing the rates, as I believe Mr. Leeds suggested, probably from 20 per cent to 25 per cent, and especially in response to my friend, Mr. Collier—I simply read his statement in the paper—I would like to call his attention to Iowa since he left there. On page 9, of the most recent report of the Commissioners of Iowa, under the heading of "Commissioners' Rates," it says: "The Commissioners' rates have now been in force since February, 1889, and while they materially reduce published tariff rates in effect at that time, yet experience shows a steady increase in tonnage and revenue on the roads doing business in Iowa, under the operation of the said rates.

"The fiscal year 1891 shows a net increase in tonnage of 1,369,882 tons over 1890. The result of earnings is even more marked. From tabulated statements found below, it will be observed that, while for the years 1887, 1888, and 1889, there was a steady decrease in the revenues on Iowa business under the rates fixed by the railroads, yet, since the legal rates have been in force, there has been a marked improvement, and a steady increase in the revenues of nearly all the roads in the State, the aggregate earnings on Iowa business climbing from \$37,148,399 75 in 1889 to \$43,102,399 35 in 1891."

Now, as you observe, Mr. Chairman, this is practically 16 per cent. "That the rates have benefited Iowa is evidenced by the increased business thereunder. The testimony of the railroad officials in the Courts was that they caused a reduction of about 26 per cent on local rates, which had been exorbitant. The effect has been to stimulate Iowa

industries by giving them cheap fuel and low rates for getting their produce to market. It has caused the opening of new coal mines," and so on.

It also shows, Mr. Chairman, in response to the suggestion of the gentleman respecting railroad construction, it shows that between 1889 and the Commissioners' rates, when the Commissioners commenced to be active and establish their rates, that the increase was over 100 miles in a State that had been already crowded with railroads and almost the whole State gridironed, so much so that the Commissioners say, it is almost impossible—speaking of the subject, they say:

"The gain in mileage in 1891 for the fiscal year ending June 30th, is but little more than the loss by the Ottumwa and Kirkville and Clarinda and St. Louis. The gain for the calendar year is 36.35 miles. Iowa is at present so covered with railways that no spot can be found within our borders that is not within fifteen miles of a railroad. With this fact facing them, it requires great faith in the future of our State and people for capitalists to elbow their way into our midst and plant new enterprises in competition with and against the stern opposition of those already established, and yet railway construction still goes on in Iowa."

Now, gentlemen, if it be true, on what basis are we told in California here, that, if we attempt to regulate rates, that we will stop all enterprise, when in this State so covered with railways that there is not a single space of fifteen miles from a railroad, where competition is so intense that capitalists can hardly see an opportunity to reap a benefit on the investment, and that, between the establishment of these rates, between 1889 and 1890, there has been built over one hundred miles of road in that State?

Now, gentlemen, speaking further on this point, I want to call your attention also to a matter to which little attention is paid. As an illustration, I will read:

"The twenty-third General Assembly of Iowa enacted a law empowering and requiring the Commissioners to establish joint rates on continuous shipments of freight over two or more roads, where said roads failed to put in said rates required by law. The Board promulgated a schedule of rates, fixing the rate to be charged by each road for such service at 80 per cent of the Commissioners' rates."

The representatives of the Mason City, and Fort Dodge, and Crooked Creek road came before the Commissioners and appealed for higher rates, stating that they could not live under the new joint rates. The Board heard them patiently, and called their attention to the fact that the Dubuque and Sioux City road was hauling the bulk of the coal into northwestern Iowa from Illinois on a low interstate rate, and supplying a market that properly belonged to them, but from which they were practically shut out by the high rates over the two roads to market. That with an 80 per cent rate over their roads, they could successfully compete with the Illinois coal. An understanding was finally arrived at to give the joint rates a fair trial for say, sixty days, the Commissioners expressing a willingness to revise the rates if there was not shown a sufficient increase of business to make up for any deficiency caused by the use of those rates. Of course, naturally, the powerful big roads of that State refused to pay any attention, and I notice the matter is before the Supreme Court of the United States, the Iowa Courts having decided against them.

EARL: Colonel, what report is that?

BARRY: This report is for 1892, and is dated December 1, 1892—the roads have not been heard from since. They are quite satisfied. It has been going on now over a year, and are now quite satisfied with that general rate, though they assured the Commissioners that, if once established, it meant ruin.

Now, gentlemen, that is illustrative of the fact that you can't always believe these statements that are founded upon a narrow view of the possibilities of a great State. I do not think, Mr. Chairman, that any great injury can arise from establishing a tariff that has proven of advantage in other States of the Union—that is even working, also, in the State of California some benefit. I do not believe that these roads exactly appreciate the great State of California, never feel that her development and her increasing prosperity will not be of advantage to them. I cannot imagine that those principles which have been followed by other corporations in other States can possibly, even in the extraordinary conditions of California, work such irreparable harm and mischief. I cannot understand that, if they kindly consent to unite with others who have made their homes in California, to extend and promote the development of the State, to advance and develop her resources, to assist our neighbors in moving over our borders to take up homes, to enable those on the outside to look with longing eyes on the wealth and treasures of this great commonwealth, and who are unable to participate in the blessings which this railroad has shut them away from; that, if they would take by the hand the population that is now fast filling up the bleak and almost sterile plateaus of the Northwest, if they would extend a welcome to that population which, notwithstanding the rigors of the blizzards which sweep along the northern portion of the continent, have made their homes there rather than come to this genial land of California; possibly, gentlemen, you would find it to your advantage to accept a tariff which has been found of benefit to those less favored regions. If Kansas, with occasional utter destruction of her crops by grasshoppers and other devastating causes, is enabled, notwithstanding these great disasters—even if favored by her level surface—to enjoy a degree of railroad prosperity under this tariff which we offer you here, California, with no such blights upon her, with these immense fertile valleys that are now unoccupied because the population has been denied them; if you will assist this State, that has none of those destructive influences, as in the more crowded regions in the Northwest, now, why, gentlemen, you will reap your reward, not only in the advancement of the interests of California, but in a financial and substantial one—one that will not be disagreeable to you, and that may possibly add to the satisfaction you will feel in promoting the prosperity of California.

Mr. Chairman and gentlemen, I thank you for your courtesy.

CHAIRMAN EARL: Is there any one who desires to make any statement or showing to the committee. Mr. Martin, do you wish to make any further statement for the Southern Pacific Company?

MR. MARTIN: Are the proponents entirely through?

STATEMENT OF SENATOR GESFORD.

GESFORD: I suppose, we being the proponents of this bill, that we are also called upon to close; whatever the committee desires in the premises. I don't care to reopen the matter. Mr. Leeds, in his testimony and statement before the committee, stated those facts which are germane to the subject. All the roads of the State, I believe, have been heard, and I believe there was one came from out of the State, from Nevada, who also had his say. And now, Colonel Barry has closed the case for the proponents of the bill. I might add one or two thoughts to what he has suggested in respect to wine rates in my county—a bugaboo that has been raised in respect to wine rates in my own county. I have seen, in the 4x6 publication in my city, called the "Napa Register," a statement from some one signing himself "Index," who I presume to be some railroad attorney, because it is written in railroad language and bears the earmarks of the Southern Pacific Railroad Company; and when I read it I at the same time remembered that the editor of that paper rides on a free pass, furnished him by the Southern Pacific Company. I am called upon simply to refer to this wine rate proposition.

This article has also been copied in the railroad organ, known as the "Sacramento Union," from which I have received a few blasts of locomotive smoke since this matter came up. And I simply want to refer to those wine rates made by my friend, Mr. Martin, the other evening. I have taken particular pains to write down and ascertain about the rates on wine in Napa Valley; and permit me to say, gentlemen, that I believe that if we had competing lines of railroad in this State there would be very little necessity for legislation upon the subject of railroad freights and fares, because I believe that competition would regulate that matter. A misapprehension exists with reference to the purposes and object of this proposed constitutional amendment. This constitutional amendment has not for its primary purpose the fixing of passenger and freight rates; that is a secondary consideration. The main purpose has been very truly stated by Colonel Barry, that this proposed amendment is to abolish those provisions of the Constitution providing for a Railroad Commission, and, in the interim, providing for a schedule of freights and fares; that is, pending the meeting of the Legislature, to which body it is proposed to relegate the fixing of freights and fares. Now, it has been argued by some that this constitutional amendment would raise the wine rates, for instance, in Napa County. It does nothing of the kind; it provides for a maximum rate, beyond which, of course, the Legislature cannot go.

In the interim a classification is adopted, and a schedule of rates is adopted, so that we may have something to operate under until the Legislature shall have fixed a schedule of freights and fares. Now, in Napa County, this question of competition is illustrated very nicely by the rates the Southern Pacific people charge on wine, and I want to read to the committee a statement I have received from that point with reference to the charges on wine in my county. The distance from Rutherford, in the county of Napa, to San Francisco, by way of Suisun, is about seventy-five miles, and the rate per ton for wine is \$1 95, or \$19 50 on a car of ten tons. This rate per car of ten tons makes 26 cents per mile for carrying a car from Rutherford to San Francisco. From Rutherford to Napa City, a distance of fourteen miles, the rate

per ton is \$1 20, and the carload rate of ten tons, \$12, or 85 cents per mile. From Napa to San Francisco the distance is sixty-one miles; the ton rate is \$1 and the car rate \$10, or 16½ cents per mile. Of course, Napa River is only navigable to Napa City. Now, gentlemen, I submit to you, if it pays to haul wine from Napa to San Francisco for 16½ cents a mile—if it pays the Southern Pacific Company to haul wine from Napa City to San Francisco for 16½ cents per mile—why not extend the rate all the way up the valley? If that was so, the Napa people, instead of paying the exorbitant rates that they do now from Rutherford to San Francisco, would pay \$2 30 per car from Rutherford to Napa. From Rutherford to Napa they now pay \$12 per car.

In other words, if they would fix the same rate from Napa to San Francisco as they now fix from Rutherford to Napa, we would now get our wine hauled for \$2 30 per car, where we are now paying \$12 per car. Now, it is not possible, gentlemen, I do not believe—it is not probable that the Southern Pacific Railroad Company, if this amendment shall be adopted, that they will raise the rates on wine from Rutherford, or that they will raise the rates on wine from St. Helena to Napa, or from Rutherford or St. Helena to San Francisco. They are charging now every cent the traffic will bear, and they are only kept in line by the little river that runs from San Francisco Bay up to Napa; in other words, they are brought into competition there with navigation, and by that means we have reasonable rates from Napa to San Francisco. Now, this idea of competition is very nicely illustrated, I say, in the wine rates of Napa County, and the Legislature, if called upon to fix the wine rates of Napa County, would undoubtedly fix it on the basis that is now charged from Napa to San Francisco. But Mr. Martin suggested the other night that there was nothing in this amendment which would permit the Legislature to provide a classification on wine in Napa County, and I see that, whoever has written this article, has said that there is nothing in the Western Classification providing for wine in wood and wine in glass or mixed cargo.

I don't so understand this constitutional amendment. I don't understand that it compels the Legislature to adopt the Western Classification, but, gentlemen, if there is any doubt in your minds as to that proposition, it is very easy to insert in the amendment that the Legislature may fix rates and fares, and in doing so, they may fix any classification that they see fit. They may provide a classification for ore. Mr. Martin suggested the other evening that there was nothing in the Western Classification relating to ore. I take it there is nothing in this constitutional amendment that will prohibit the Legislature from fixing the classification, or from providing the rates upon ore, or upon wine, or upon any other commodity. This classification is only to be used in the absence of the Western Classification—in the absence of any legislation, and we can well afford to wait a year and a half, providing we have some reasonable assurance that, when the next Legislature convenes, we shall have the rates remodeled and reconstructed in the interests of the people. Now, another suggestion made by Mr. Martin the other evening. I want to say, at the outset, gentlemen, I will say, that I am an attorney and don't desire to be anything else—I don't know anything about railroad rates and fares. I don't pretend to know. It isn't my trade, it isn't my business. I have introduced this bill, gentlemen, in good faith, at the suggestion of the Traffic Association, and if it has done

nothing else, I believe it has educated the people of the State of California, and this committee, and this Legislature, and I know it has given me a few ideas about railroad freights and fares. I never did know much about railroads—never had a free pass, and don't think I ever saw one.

But if this constitutional amendment provides a wrong basis for determining what the gross earnings of any road are—that is, if the Thirteenth Annual Report is not a proper basis, then this constitutional amendment can go further, and provide that the railroads of this State shall report, say on or before the 15th day of January, 1894, to the Governor of this State, what their gross earnings were for the year 1892, and that shall be the basis for passenger and freight rates for the following year, the Thirteenth Annual Report being made to govern for the year 1892; this is a very easy thing to arrange. The objection that was made by Mr. Martin—I will not say it was Mr. Martin, but some one—as to what railroads were meant when we referred to railroads in this constitutional amendment. It is a very easy matter to incorporate that "Railroads doing business in the State as common carriers;" that will cover that proposition.

There was another objection made, that the latter portion of this amendment provides that all lines should be considered independently in fixing these rates.

I refer to additional rule 1:

"railroads shall be considered independently in computing distances; except, however, that a system of railroads, consisting of leased, operated, or independent roads controlled under a common management, although working under different charters, shall be considered and treated as one road, and the distance shall be computed over the shortest operated line composed of two or more of said roads."

I was surprised at the Southern Pacific people objecting to that rule, as it is really in their interest, because, if they lease several roads, the rates are fixed over the shortest operated line of leased roads, and hence they would get larger freight rates than if controlled independently, because five, ten, or fifteen miles on a short mileage are higher there than on longer miles of road; therefore, I can see nothing in that objection on the part of Mr. Martin; but this rule is really in the interest of the Southern Pacific Railroad, if it could be in the interest of anybody at all.

Now, as to these rates being reasonable—I don't care to discuss that; but it is in evidence here, and it seems to me it is a matter worthy of consideration, that if roads in other parts of this country, having a gross earnings of \$4,000 per mile can make money, they ought to in the State of California. That looks like a common sense principle to me; and the idea that we are to fix our rates and have no redress because of our high capitalization, seems to me ridiculous. It makes no difference whether one road is capitalized for \$100,000 a mile or \$40,000 a mile.

EARL: You take a mountain road, for instance, which costs much more to construct.

GESFORD: Well, I would make it uniform—that is the idea; no matter what the road costs.

EARL: That's the point I was getting at. That is the point which is not to be escaped. You take a road built to-day, say in the mountains, which, unavoidably, by reason of tunneling, grading, etc., will cost a great deal more than one in the level Sacramento Valley, and yet this

is uniform; and a rate reasonable for roads here in the valleys must be reasonable for one constructed at an enormous outlay—perhaps four or five times as much as the other.

GESFORD: Well, this maximum rate is provided only in the interim, that is all.

EARL: But, Senator, the Constitution says you cannot exceed that maximum.

GESFORD: If they earn \$4,000 per mile.

EARL: They cannot exceed it.

GESFORD: But if they make money on \$4,000 per mile in other parts of the country, it seems to me they ought to do so here—possibly more.

EARL: There they may have a level road, as level as a table, while here are the Sierra Nevadas. While for all railroads in operation, this amendment, Senator, says for five miles and under, first-class merchandise, per one hundred pounds, would be 3½ cents.

GESFORD: Yes.

EARL: Yes, that is the maximum; whereas, in the mountains, with heavy grades, etc., that might be excessively low, in the valley it might be reasonable. There is the very difficulty in attempting to fix a uniform rate.

GESFORD: Of course, there are a great many mights in this case. You might suppose anything.

EARL: Yes, but Senator, is it not inevitable—how can you escape it?

GESFORD: Well, we do escape it. That \$4,000 per mile is enough to make up for the additional cost of operating.

SEAWELL: Senator, allow me to interrupt you a minute. Do you mean to say—I think you did, if I understood you correctly—do you mean to incorporate, Senator, these pages, 3, 4, 5, 6, 7 in the Constitution?

GESFORD: Yes, those distance tariffs; if that is what you refer to.

SEAWELL: Yes, those are what I refer to.

GESFORD: Yes, that is what the Traffic Association proposes to incorporate in the Constitution. If I may be permitted to state what my opinion as a lawyer is, I would prefer first to wipe out this Railroad Commission. That is the great proposition in this case, and I take it, gentlemen, that this thing is one of the things, above all other things, that the railroad companies of this State do not want wiped out.

SEAWELL: Do you understand, Senator, that these pages, 3, 4, 5, 6, and 7—

GESFORD: That is, the distance tariff. Yes, these pages of figures go in.

SEAWELL: What, go into the Constitution?

GESFORD: Yes, they are to go into the Constitution, certainly, because you have got to have a distance tariff.

BARRY: You must have something in the interim to work under.

GESFORD: Yes, in the interim. What are you going to do from the time it goes into effect until the time the rates are fixed? What I would suggest as a lawyer would be this, and it only suggested itself to me to-day—and I may say this distance tariff has given me no little concern and trouble, because it was such an innovation and it would look so strange in the Constitution, which is already filled with statutes on every conceivable subject. But if this Railroad Commission could be wiped out, abolished, then this Legislature could enact a law providing for a Commission to fix a schedule of freights and fares. The

Railroad Commission to be subject to the Legislature, and the Legislature could wipe it out whenever it saw fit. Let the Governor of this State, immediately after abolishing this Commission, appoint three Railroad Commissioners to act temporarily, and at the next general election, let them fix a system of freights and fares; and provided that at the next general election, a Board of three Railroad Commissioners from the State at large, shall be elected by the people—that Railroad Commission to be subject to the Legislature, so that we would not have to get rid of it by compelling a two-thirds vote of each house and then by ratification over again by the people of the State. Some such system as that, I conceive, would be more lawyer-like than this; but this is a war measure.

BARRY: Yes, it is a war measure.

GESFORD: It is a war measure—like Lincoln, when he called for troops and it was said he hadn't authority, he replied, "But, gentlemen, this is a war measure."

BARRY: Certainly, it is a war measure.

SEAWELL: Oh, then, it is a war measure? I am in accord with you in much that you say, but here, these pages, 3, 4, 5, 6, 7, and 8, must be voted for by the people if you put them in the Constitution. I don't think they would ever be able to make them out—to understand them.

GESFORD: I don't think they would, either. That is what we are here for, Senator, to give them something, and then, when we get out of here—I don't think we are any the less through with it when we get out. I think it is our duty to explain these matters to the people of the State of California.

BURKE: Let me ask you, Senator, if it would be any worse to allow the interim to go quietly along until the next election than it is now.

GESFORD: I am glad you asked me that question, Senator. I believe there is enough decency left in the railroad companies of this State, and I refer particularly to the Southern Pacific Company, to compel them to maintain a fixed and reasonable rate of freights and fares until the Legislature shall have convened. It cannot be any worse than now, for these Railroad Commissioners have not given any relief. The railroad companies fix every tariff before it is published anyway. It could not be any worse even if embodied in the Constitution. If there is any reason why they should not be embodied in the Constitution—that distance tariff and that reference to the Western tariff—abolish the Railroad Commission and leave the people of the State without any Railroad Commission.

SEAWELL: Do you believe, as a matter of fact, and as an attorney—do you believe these pages, 3, 4, 5, 6, and 7, should go in the Constitution, that cannot be changed readily?

GESFORD: You are asking a very pointed question. Not—that is—we understand—

SEAWELL: No, I am simply asking a question. I have not attended all the meetings. But do you really think that these pages, 3, 4, 5, 6, 7, should go into the Constitution? Is that statesmanlike?

GESFORD: Well, I don't think that Thomas Jefferson, or Daniel Webster, or John C. Calhoun would have put it in the Constitution. No. But I do say, and I repeat it, I do not care how it may look in the Constitution, if it will give the people the relief asked for. I don't see that it will make the Constitution any worse off if it will only do the work.

SEAWELL: That's right, Senator.

BARRY: I say as a lawyer, it is fitting for such an extraordinary time, and under such extraordinary conditions as are existing to-day in California, and it will be a monument in history, that the people of California were only, in despair, forced to seek and obtain relief in this manner.

SEAWELL: Colonel, I think you made a very eloquent argument upon the present condition of matters affecting railroad legislation, and I think these things ought to be regulated by statutes. I think you are perfectly right in that and correct in your motives. But I think your argument is against putting that in the Constitution. I think the Railroad Commission has not done its duty—I agree with you upon that.

BARRY: Well, you want to have this in the interim.

EARL: But, Colonel, that interim—how long is that interim? That goes into the Constitution forever, until changed by constitutional amendment. How long is that interim?

BARRY: Well, Senator, it don't seem as long as fourteen years.

EARL: But this goes into the Constitution forever.

SEAWELL: Cannot it be based upon the Constitution in some other way so it can be applicable?

GESFORD: No, sir. Of course, if the Legislature, as it undoubtedly will, fixes a system of freights and fares at the next session of the Legislature; if it becomes incorporated, it will be so much dead timber in the belly of the Constitution, so to speak.

EARL: But this clause says: "The Legislature shall have no power to exceed these rates—"

GESFORD: I say, Mr. Chairman, that specific distance tariff would become inoperative, in all probability, because the Legislature would change it in many respects; it would be the maximum rate.

EARL: But how could they do it? They could not exceed them.

GESFORD: No; they could not exceed it, but they might make a less rate.

SEAWELL: In case it worked a hardship to the small roads, how could that be overcome? If you put it in the Constitution, you destroy the road.

BARRY: That assumes a state of facts that we do not see exists.

SEAWELL: You admit my premises. Am I not right?

BARRY: If it would destroy a road, your premises are correct.

SEAWELL: That would make the Constitution unyielding and unpliant upon the small roads.

BARRY: If it would destroy a road, your premises are correct. On the other hand, the Legislature meets every two years and could adjust it.

SEAWELL: Of course, in asking the question it didn't indicate anything at all. I am simply asking for information. I have not attended the meetings of the committee.

GESFORD: I want to state to the committee, when asked whether this matter should be embodied in the Constitution, I don't know—I understand—I want to say that, under the present condition of affairs in this State, why, that is the only time I would do it.

SEAWELL: In time of war, you say, and not peace, you mean.

GESFORD: Yes.

BARRY: Yes, in time of war—it is a war measure.

EARL: Take the Atchison road, against which there does not exist any prejudice. They have shown to the committee they are doing business to-day in this State at a loss, yet their annual income per mile exceeds this in gross; it is \$6,000. They are doing business at an actual loss in this State. If that be true, would it be just or right to put a maximum in the Constitution, which is, I will say, according to their showing, a less sum per ton than they are now charging; would it be just and right to put it in the Constitution?

GESFORD: If they are doing business at a loss, Mr. Chairman, and honest in their endeavors to compete with the Southern Pacific Company, which I understand they are, it will be a very little while before they are doing business at a profit.

EARL: How can that be Senator? They are operating in the southern part of the State, over a large section of the country, in some places where there is not a house in miles, and they want to come north.

GESFORD: When they get ready to come, they are going to come.

EARL: It would cost a vast sum of money. And, if they are doing a losing business now down there, if this rate is less than they are now charging, they would be making still less instead of more money, as they have shown conclusively to the committee. They would not be likely, in view of that, to invest \$20,000,000, which I suppose is not an excessive estimate of the expense of coming to San Francisco.

GESFORD: Well, Mr. President, in answer to that proposition, and it may be considered no answer at all, I had rather the Atchison, Topeka, and Santa Fe, or Southern Pacific, or any other railroad company, would operate at a loss than the producers should operate at a loss. That is the only answer I have to it.

EARL: Would it not discourage the entering of competing lines, which we all desire?

GESFORD: I don't think so. The Southern Pacific operated at a loss for awhile, until it got in and got a foothold and got the trade.

EARL: Have the committee any questions—anything to say?

BURKE: No questions.

EARL: Any questions, Senator?

SEAWELL: Nothing.

EARL: Any one that desires to make any statement to this committee? Is there any one present that wants to say anything to this committee?

[The Chairman here arose and looked around the room and again repeated his question aloud, but no one answering, he said:]

"If not, we will consider the matter of this amendment submitted."

[The committee were leaving the Senate chamber, when Mr. Barry addressed the Chairman, as follows:]

"Senator Earl, Mr. Sneath does not think he has been fairly treated, because the committee has not heard him."

EARL: I asked if any one was present who wished to address the committee, but no one answered.

MR. SNEATH: I sent my name up, and thought that sufficient.

EARL: That makes no difference. The gentleman should have come forward when he was asked for. If you want to make a statement now, I will call the committee together to hear what you say.

SNEATH: Well, I sent my name up; I came up from San Francisco and I think I should be heard.

EARL: But you did not answer that you wanted to be heard.

SNEATH: Well—

EARL: If you want to be heard, I will sit now and hear you.

SNEATH: I just want to make a statement of the facts.

[The Chairman then called the committee together for the purpose of hearing Mr. Sneath's statement.]

STATEMENT OF R. G. SNEATH.

CHAIRMAN EARL: Mr. Sneath, would you like to make a statement to the committee? Senators—Mr. Sneath came up here from San Francisco on this matter, and would like to be heard; he did not understand that it was taken under advisement.

MR. SNEATH: Mr. Chairman, and Gentlemen of the committee—I came here for the purpose of stating some facts that have come to my knowledge in relation to the matter of railroads in this State and elsewhere, and more particularly in reference to the Southern Pacific, for I have had more dealings with them. My own particular case: I handle considerable freight; and in relation to one portion of it—that is the ice business—I find by the figures which I have, and which were presented before the Railroad Commission, that they are charging me nine times as much per ton per mile as they do in the East for the same privilege. I furnished those facts before the Railroad Commission. The fact is not disputed; the facts are plain; and the rates in the East, and I only refer to combination rates, that is of the lines of railroads connecting with the lakes for the interior and to some two thousand different places. The Southern Pacific charge nine times the average charge there, which is about one half a cent per ton per mile, the charge here being 4½ cents per ton per mile in carload lots; that makes just nine times as much. In relation to the matter of grain: I also handle a great deal of grain.

BURKE: To what points do you ship? A. From San Francisco.

Q. Over what lines? Over what lines is it 4½ cents? A. I ship wherever I can from San Francisco.

Q. Do you ship very much, Mr. Sneath? A. I cannot ship very much.

EARL: I thought you stated that you shipped a large amount of ice, Mr. Sneath.

MR. SNEATH: I manufacture a large amount; I don't ship much, I ship around the bay of San Francisco near San Francisco; am not able to ship in the interior very much on account of high rates. I go round the bay of San Francisco and near San Francisco; we cannot compete with other parts simply because the rates are lower from other points, from the mountains.

In the matter of hay and grain, I receive most of my hay and grain from Hollister, that is about 100 miles from San Francisco. The rates from Hollister for instance on grain are \$3 per ton; that is 3 cents per mile for 100 miles. Now the rates on grain from the Mississippi River East to Atlantic ports is about one half a cent per ton per mile; sometimes it is less, but that is considered really a good rate—one half a cent per ton per mile. From St. Louis to New Orleans, the rate is \$2 20 per

ton. You call that one thousand miles; that is .22 of a cent—less than a quarter of a cent per ton per mile. They find money in that business. If you will notice the financial reports in relation to the value of railroad stocks in the East, you will find the stocks depend very materially on the quantity of grain that is carried by the roads. If the grain crop is short in the West, and the freight is low, stocks go down.

It shows for itself, on the face of it, you know, that even one half a cent per ton per mile is considered good profit for railroads in the East. There is, of course, a large amount of freight taken for much less than that. They send it as low as 16 cents a hundred from Chicago East—as low as 16 cents per hundred pounds; 22 cents a hundred, or about \$4 40 per ton for about nine hundred miles. If 22 cents is considered a good high rate, which it is, and I have seen it quoted at 16 cents for this one thousand miles. To show that the railroad people really themselves think that that is a reasonable rate, they charge themselves that rate on all the freight they handle in their own accounts. They charge about one half a cent per ton per mile. On their Pacific division, for instance, the Southern Pacific road charges .53 of a cent, I believe, as shown in their last report; that is about one half a cent. Now, I tell you, they now charge me on grain from Hollister 3 cents per ton, or six times as much as they charge themselves. Then in the same way from San José, it is \$1 75 per ton on grain to San Francisco—50 miles—or 3½ cents per ton per mile, or seven times as much as they charge themselves per mile. These are very high prices, but I have taken the rates for one hundred and twenty-one different places through California, and the average of those one hundred and twenty-one different places was 2.52 cents per ton per mile; well, that is just five times what is charged from the Mississippi River East—one half a cent a ton a mile. The question is, can our people stand any such charge as that; it seems strange to me.

MARTIN: Allow me to ask you a question. You made a complaint before the Board of Railroad Commissioners of this State concerning the charges on ice from San Francisco, some time ago? A. Yes, sir.

MARTIN: Did not the Railroad Commission reduce the rate at that time very materially? A. They reduced it from ten times as much—the original rates were ten times as much—to nine times as much. It does not affect the business, simply because it was reduced to points we did not reach.

MARTIN: Don't you know the rate from San Francisco to Fresno, a distance of two hundred and six miles, is less than two cents a ton a mile, now, to-day, and has been for some time? A. Well, that was a point we could not ship to if we wanted to; that is out of our district; we cannot reach that—that is going toward another company.

EARL: To what company? Los Angeles?

SNEATH: Well, the Truckee people get it for \$3 a ton from the Truckee River, I believe, and we are charged \$4 from San Francisco to Fresno, as a matter of course.

MARTIN: That is two cents a ton a mile, is it not?

SNEATH: Yes; but natural ice can be harvested and put up cheaper than manufactured ice can be made here. The Truckee company are charged about one cent, from .32 of a cent per ton per mile for ice from Truckee to San Francisco, while we are charged 4½ cents per ton per mile to go out of San Francisco.

MARTIN: Not to Fresno?

SNEATH: No, but you understand we do not ship to Fresno. We cannot reach there; that does not belong to us. That is the reason the railroad companies fix the rates, so we could not use them, so they could not do any good.

EARL: Mr. Sneath, how much more do you sell ice for here than they do in the East? Did you ever figure on that?

SNEATH: Well, the ice costs a great deal more here than in the East on account of the coal, and on account of other things. Coal is the principal thing in the manufacture of ice.

EARL: The coal also costs more to the railroads to move the ice, does it not? A. No, sir; it does not; the railroad company can get coal for \$3 a ton, while it costs us here \$6 and \$7 a ton; there is the difference. The railroad company can get coal at Ogden, first-class coal for about \$3 per ton.

Q. How about it here; how much do they pay for coal here? As to Ogden, you might say they could go back into Kansas and get it for 75 cents per ton? A. Well, their road reaches from here to Ogden.

Q. Well, it costs something to get that coal from Ogden here? A. Well, that furnishes that end of the road.

Q. How about this end of the road; is that the price of coal here; is it the same price here? A. Yes; but on the El Paso portion, on and along the line of that road, they probably get it fully as cheap as at Ogden; possibly cheaper; and it is likely the coal down there for \$2 50 per ton, the—

Q. But the ice is cheaper there, is it not? A. No, sir; I think the ice is higher in that section.

Q. If it depends upon the price of coal, it would be? A. Well, they have smaller machines, and don't make it on so large a scale, that is the difference; they cannot afford to make it as cheap with a small machine as with a large machine; but this matter of fuel, I note the railroad company put in its coal for \$5 85 this last year; as I told you, they can get all the coal they want at Ogden for about \$3 per ton, and all they want south for less, and here in San Francisco for less than \$5 85 per ton of 2,000 pounds. And wood they put in for \$4 60 or \$4 70 a cord. I know parties that have offered them wood at \$1 a cord and they would not take it.

Q. Was that at Ogden, too? A. No, sir; not at Ogden. The wood, as I understand it, can be cut and be put alongside the track for about \$1 25 a cord. And why should they enter it in their accounts as high as \$4 and the odd cents a cord for wood?

MR. GAGE: You say one half a cent is the rate the company charge themselves. Add this to the cost of coal at Ogden, one half a cent per mile, what would it be worth in San Francisco? What is the distance? A. Well, I suppose it is 900 miles to San Francisco.

MR. CURTIS: At half a cent for nine hundred miles, that would be \$4 50. Add \$4 50 to \$3; that is \$7 50, isn't it?

MR. SNEATH: I imagine that class of coal is not used in San Francisco; it is probably used only as far as Sacramento. I understand the coal from the South is going up as far as Fresno, being supplied from Los Angeles. The Atlantic and Pacific road put down in their reports \$1 50 per ton for coal, and wood at \$1 per cord. I speak of these things to show that the operating expenses of the Southern Pacific Company

are kept up by such charges. Notwithstanding these high charges, the Central Pacific, as I understand it from their report—their operating expenses last year were only 55 per cent out of the earnings. I do not know of another road in the United States where they are as low as on the Central Pacific. I can give you the net earnings. I can show you what those roads are capitalized at; what the earnings show. I can show you what the road is actually doing, and their purpose is—I had better speak of that, if you have the time.

SEAWELL: Do those figures agree with the statements of Colonel Barry; he gave us that.

EARL: If so, you had better file them with the clerk. A. I do not think Mr. Barry has said anything in relation to that.

MR. GAGE: I know something about the price of coal. For about fourteen years on the Central Pacific I bought every pound of it. I have paid for cargoes, and only regretted I could not get more of them, from \$10 to \$12 per ton by the cargo in San Francisco.

SNEATH: Oh, yes; coal has been very high; on three occasions, at least. You take the Southern Pacific of California, 1,403.5 miles —

BURKE: Did you get those figures from Poor's Manual? A. No, sir; from the Southern Pacific's reports. I have it here. The Southern Pacific Railroad of California has a gross revenue of \$6,611 54 per mile—that is what you call the Coast Road—with a net revenue of \$2,744 09 that capitalizes at 15 per cent.

EARL: You differ \$1,800 per mile there from Colonel Barry's figures. A. I took it from the Southern Pacific report; from their last report.

BARRY: Ours are from Poor's Manual, 1892.

SNEATH: \$2,744 09, that is the net; that is the way it is given here.

BURKE: For the same mileage?

SNEATH: Capitalized at 5 per cent it would make a valuation for that road; it would make good security for \$54,881 80; that shows what the net earnings would capitalize the road for at 5 per cent.

EARL: How much was that? A. That was \$541,881 80. That is the load that road would carry in the shape of bonds. What you might call capitalizing it. This road, the Southern Pacific road of California, is nearly all level road, and I estimate that road could be built for \$20,000 per mile. If that is the cost, the revenue they receive on that road would be equal to 14 per cent, a 14 per cent dividend on a valuation of \$20,000 per mile. I made these figures to show what a promising property they have got, you know. The South Pacific Coast is one hundred and four miles in length. They report gross earnings, \$10,651 66. Does that tally with your figures?

BURKE: Some figures.

EARL: Net earnings? A. The net earnings were \$3,786 61.

BARRY: My net earnings were in bulk for the whole line of the road, Mr. Chairman. And Mr. Sneath's are for each individual road.

SNEATH: Yes, for each individual road. That road would capitalize for \$75,732 20 from the net earnings of the road at \$20,000 per mile, or about 19 per cent interest per annum on the net revenue that they report; that is a pretty good sized interest, 19 per cent. I think that South Pacific Coast road could certainly be built for \$20,000 per mile. It is a narrow gauge road all the way.

Take the Northern Railway, 390.38 miles; its gross revenue was \$7,465 65, and the net revenue \$3,522 65, which would capitalize

\$70,451 per mile. At a cost of \$20,000 per mile—and that is a level road—it would pay about 20 per cent per annum dividends. That ought to be good property.

The Northern California Railway, 51.02 miles, has a gross revenue of \$1,876 16, and a net revenue of \$1,663 33—no, I mean \$166 33—that would capitalize \$3,266; that is all it will carry at 5 per cent; that pays seven eighths of one per cent per annum. That don't pay very well.

The Central Pacific Railroad Company, with a gross earnings of \$12,224 76, and a net revenue of \$5,452 80; that would capitalize at 5 per cent so as to carry \$109,056 40 in bond, or at \$20,000 per mile it would pay 27 per cent per annum profit. This Central Pacific road is 1,360 miles long; there is probably 50 to 100 miles of that that is mountainous, and some parts of it may cost over \$20,000 per mile.

BURKE: How long is that? A. That is the Central Pacific, 1,360.28 miles. That includes from Ogden clear through to San José, to Sacramento, and some other branches, all together 1,360.28 miles. They put them together in their reports as all belonging to the Central Pacific, although a portion of the property is non-aided, and I have put it in that shape simply because they have separated in this way.

BURKE: I understand. A. Out of 1,360 miles, perhaps 100 miles is mountainous road, costing a great deal more than \$20,000 per mile—probably \$60,000 per mile, I imagine it can be built for; probably 100 miles of it for \$40,000 per mile, and the balance for \$20,000 per mile, but I will take \$20,000 per mile, that would give interest at 27 per cent per annum, judging from net earnings.

GAGE: Is that the Central Pacific? A. Yes, sir.

GAGE: Do you remember what it is bonded for? A. No; I did not look at that, but it will capitalize with the net earnings as a basis. They made enough money to give them a clear 5 per cent; that would capitalize at \$109,000 per mile, which is good interest.

SNEATH: That is pretty good property, gentlemen.

GAGE: I believe the Central Pacific bonds are all six per cent? A. Well, I assume—some of the bonds are five, they could be disposed of at five per cent without any trouble.

MARTIN: What you and Colonel Barry term the net profits is, as you understand, the amount left after deducting the operating expenses from the gross earnings—is it not? You don't mean that is the amount of money applicable to dividends? You mean after deducting the actual operating expenses from the gross earnings? A. I took it right from the books, the net earnings over and above operating expenses, as I understand it, fixed charges and taxes—or what are called fixed charges; interest that the investment is entitled to and taxes will go together, all the balance goes to operating account; that is the way I understand it.

MARTIN: You don't mean by the net earnings the amount applicable to dividends? A. Yes, sir; that is the dividends and taxes, and as you don't pay your taxes, they don't figure.

EARL: Would you not pay the fixed interest? A. As a general thing railroads—that is the majority—consider that as a part of the fixed charges. It goes with interest on the investment as the operating expense. That covers every charge of every kind and nature, against the railroad for operating—everything; and then the fixed charges are the taxes and the interest.

EARL: On bonded debt? A. Yes, sir.

BARRY: Bonded indebtedness—funded indebtedness.

SNEATH: Well, it may not be bonded; the interest on capital; what the capital gets, what is called fixed charges.

The Southern Pacific of Arizona—the first of those roads here—384.91 miles, has gross receipts of \$3,788 61; the net earnings are \$1,481 95; that would capitalize at 5 per cent, \$296,338 80 per mile, at \$20,000 per mile. I suppose to-day if it could be built for that, it would pay 7 per cent for those net earnings.

The Southern Pacific of New Mexico. The gross earnings are \$3,486 20 per mile, the net earnings \$2,647 67 per mile; that would capitalize at 5 per cent, \$52,953 40 per mile, and pay 13 per cent on a cost of \$20,000. I put in \$20,000—I suppose somewhere between \$15,000 and \$20,000. The profits received there would be 13 per cent per annum on the business.

BURKE: What are the gross earnings? A. \$3,486 20.

SNEATH: Now, take the California and Oregon road, 558.50 miles. It has a gross revenue of \$3,821 57, and a net revenue of \$680 55 per mile; that would capitalize at \$13,611. Or it would pay $3\frac{1}{2}$ per cent interest on \$20,000 a mile; that would capitalize, at 5 per cent, at \$13,611.

The Oregonian Railroad. That pays a loss of about 1 per cent on a valuation of \$20,000.

The Portland and Willamette, 28.5 miles, has a gross income of \$3,151 46, and a net income of \$751 50; that would capitalize at about \$15,000, or pay $3\frac{1}{2}$ per cent on \$20,000.

The California Pacific Railroad. That has an income of \$13,242 79 on 115.44 miles of road. Its net earnings are \$6,879 40. That would capitalize at about \$131,000 per mile at 5 per cent. The net earnings of that road would pay a dividend on \$131,000 per mile, in round numbers. Or at \$20,000 per mile, this California Pacific Railroad, which is on a dead level almost (it runs from Sacramento to South Vallejo, and from there up to Calistoga, 115.44 miles); it is almost on a dead level—on \$20,000 a mile, which would build that road, it pays $32\frac{1}{2}$ per cent on a cost of \$20,000 per mile.

EARL: You don't figure on any engine or cars?

A. Yes, sir; figure in this whole business. I calculate the \$20,000 per mile would build the road and equip it; all of these figures are based on the building of the road and their equipment. These figures are all made in that way, account of construction and equipment. Now, there are a good many small roads running that are built for \$8,000, \$10,000, and \$15,000 per mile, and we don't know as a matter of course whether it is absolutely correct, or water has got in it or not, but it is generally stated that you can build a road now with anything like decent economy at \$15,000 per mile. I think the Great Northern was built for something like \$24,000 a mile, and it is through a mountainous country. Isn't that true, Mr. Gray? Don't they report \$24,000 a mile?

MR. GRAY: Yes, sir.

MR. SNEATH: That is a mountainous country. The idea of \$24,000 a mile; it don't seem possible, hardly; but they are building roads very cheaply now. Now, the question is, Are the people to pay interest on what these roads cost twenty or thirty years ago? Everything else that has been built twenty or thirty years ago has been torn down or rebuilt. They have got their money out of it—they have made money out of it,

and are putting up new edifices; they have thrown the old ones away. That is what I have been doing for the last twenty or twenty-five years, and I have certainly felt I have got my interest on investments made at that time; I believe we have a right to ask, as citizens of this State—we have a right to ask that they shall not charge us more than a fair rate of interest on the cash value of their property. I think we have a legal right to ask that. I certainly don't want them to lose anything on the property—I don't want them to work for me for nothing, still, at the same time, every one, of course, is trying to get in this world all they can, and the easiest way they can get it; and those that have to pay their money, they, of course, are holding back all they can. But there is, of course, a legal and moral position that we, of course, must occupy, and as far as a legal point is concerned, I suppose there is no doubt they can hold us to a reasonable compensation for the use of their capital. Now, the proposition is to fix what that capital ought to be—what this property should be worth, and then it is a very easy matter for the Legislature, or the gentlemen of the committee, or the Railroad Commission, or what not, that is authorized to fix the rates of fares, etc. Gentlemen, you can fix the rates and fares, provided you will allow them 6, or 7, or 8 per cent, if you please, interest on the capital invested on that property. Now, you can arrange your rates and fares to bring that. If they don't bring that, then you have no legal right to make it so low that they will not get their legal rate of interest. There is the point; there is the key to the whole thing. This property must pay a reasonable rate of interest on its value, on its cash value at the present time—not what it cost twenty-five years ago.

MR. GAGE: May I ask what you would do with the Central Pacific, that is bonded to the Government, say for \$54,000 a mile—a Government contract. California is great for sticking to the Specific Contract Law, which was passed a few years ago. What would you do with that which was bonded to the General Government? A. I don't think the Government has the right to charge us any more than an individual charges us.

MR. GAGE: Then it is the fault of the Government. I want to find one thing that this railroad company is not chargeable for, that would be the fault of the Government? A. I don't think the Government has any more right than you have to charge us more than the service is worth. I believe the Government ought to be able to do it for what the service is worth, and she certainly ought to be able to make rates, and my idea is that they should be fixed without regard as to who owns the bonds; that there is railroad property worth so much, and they are entitled to 6 per cent interest on that property after paying all expenses. Now you fix your rates to bring that money, and be sure you do not get them too low, and see that they get their money. I am perfectly satisfied to see them all get full interest on their investment, but, good gracious, I don't want to see them pay 20 per cent to the Government or anybody else.

MR. GAGE: But those bonds are mortgaged to the Government at 6 per cent—those bonds are not due yet or payable. Would you be for breaking, forever violating it? We are great sticklers for specific contract laws here in California? A. Well, as I said before, I should fix the rates upon that road, or any other road, just the same as though there were no bonds on it at all. Of course I should be careful in esti-

rating the value of that road—the bonds of that road—I should not get it any lower than they ought to get it. Because the road is bonded for twice what it is worth, that is no reason the people of this State should pay twice the charges that are necessary.

MR. EARL: How would you enable the roads to pay their bonded indebtedness? A. Let them lose the bonds, the same as we all of us have to do when we make a bad trade or investment.

MR. EARL: Suppose the road is foreclosed? A. It is simply a mistake in issuing so many bonds on that road. If that road is only worth so much money, let the Government foreclose it. And if the whole property is not worth \$65,000 per mile, or any other sum the road may be owing, the road will sell for what it is worth, and whoever has the last mortgage on it is the one that makes the loss. Let the Government lose it. It shows they make bad mistakes all the time in matters of legislation, and there is no one to make it good to them. If we make a bad trade we have got to stand it, the same as all of us when we make a bad trade. But really, as far as the Central Pacific is concerned, I have shown you the receipts of that road—the net earnings of that road, to-day—is equal to \$109,000 capitalization at 5 per cent. Now, that is good property. The indebtedness of that road is not any such sum as that. Now, suppose—I don't know exactly, I haven't figured what the bonded debt was—I suppose, with the interest and all, it may run up to \$70,000 and \$75,000 a mile.

MR. GAGE: You wouldn't pay that? A. Well, I don't know about that. That road, you see—

MR. GAGE: It is too much. You wouldn't pay that? A. I tell you the way this is divided up in your reports. This Central Pacific is not the same Central Pacific upon which the Government has issued her bonds; it is mixed up. In this case there is thirteen hundred and sixty miles. In the road that was subsidized there was seven hundred and thirty odd miles, and consequently this don't apply, only in a general way. I put it in here in this way because the railroad folks have seen fit to put it together in their report that way. But there is a large portion—there is five hundred or six hundred miles—that the Government has nothing to do with, and this five hundred or six hundred miles increases the value of that road very much; so really it is not fair. The Central Pacific does not earn of itself—that portion that has been subsidized—does not earn the relative proportion that appears in this report; it don't earn that. I didn't figure it out, and I couldn't do it, because the freight is not separated in the accounts. You don't know what business passes over the Central Pacific; that is, what proportionate amount that has been received per mile has really passed, has passed over the Central Pacific.

The books are not kept in that shape, because it is difficult, indeed, to do it, because they have to take into account freight at Sacramento, and as the road goes to San José by the Western Pacific—and, of course, the bulk of it going to San Francisco, back and forward—it is almost impossible to keep the books, to keep the accounts, so as to have the equivalent freight that passes over the subsidized road kept by itself. It is a very difficult matter to do it. I have an article here from the "Scientific American," taken from the "North American Car-Builder," I think it is called, in which they undertake to prove that in the winter season in the East, that a locomotive, if it will do a certain

amount of work in the month of July, that she can only do half as much in January, and they give us an instance on a Western road where the coal account in the winter season amounts to some \$24,000 or \$25,000 more, I believe, than in the summer season, for the same amount of business—the same number of locomotives, I believe, exactly. It goes to show that our climate here is very favorable to this kind of business. The points in this article are these: You will all understand and appreciate the fact that, in the first place—

MR. BURKE: Have you the article? A. Yes, sir; I have the article.

MR. BURKE: Can't you file it with the clerk? A. It is a paper, you know. I can file it, and the committee could then examine it.

MR. BURKE: We are going to be pressed for time, and you can pass on to those other points—you have other points, have you not? A. I am very nearly through. This is the "Scientific American" Supplement. I can get another copy of it.

MR. BURKE: I will ask you to file it with the clerk, and then we can look it over.

MR. SNEATH: The feeding water is ice cold, and goes into the hot boilers—it requires more fuel in order to heat it up. Every moving part of the engine, where the lubricating oil is, is more or less stiff—it freezes up, it becomes tough, and it is almost impossible to move. All of those that are accustomed to seeing the old fashioned wagons which used tar on the wheels know the difficulty they had in the morning, of starting their wagons—it is all tight, you know; it would get tight as soon as it got cold, and on a frosty morning it was almost impossible to move the wagon.

This article states that lubricating material for car wheels, for instance, that it is necessary to use a heavy material, something that would not heat up and run off; if it was too light and oily, and the weather warm, it will all run away, and the axle will become hot. If it is too thick, and the weather gets very cold, it freezes up, and there is a friction there that requires an immense amount of force to move. And then again, the track being frozen, the car wheels slip. The track being rough, as a matter of course, it requires more force to move the train, and then again they can't take advantage of the down grades. When there is no snow or ice on the tracks, they can shut off steam and let their engines run along perhaps a quarter or half a mile until they come to their station. When there is ice and snow on the track, they have got to keep on steam until they get right to the station, using almost double the amount of steam all the way. That, together with a great many other items, makes—

MR. GAGE: Makes it very expensive.

MR. SNEATH: Yes, makes it very expensive in the winter season.

MR. GAGE: Certainly, and makes it very difficult to do business. I want to say a word, Mr. Sneath; we have felt that a great many years on the Central Pacific; more than one half of the Central Pacific labors under just exactly what disadvantages you are talking about, where the thermometer is frequently below forty degrees below zero. It runs for over four hundred and fifty-two miles of that road in the State of Nevada, where it labors under that disadvantage. About two thirds of the Central Pacific has been operated ever since it was built under just the contingency you are speaking of.

MR. SNEATH: This was all new to me until I saw this article in the

"Scientific American." I believe it is absolutely true for that reason. In California the bulk of the business is in the valley, where we have no snow and ice. It is only in the mountains. And on this line there is only a small percentage of the business.

MR. CURTIS: Allow me to ask a question; are there any grades on those roads with which comparisons are made?

MR. SNEATH: Oh, those Eastern roads have all sorts of grades, up and down, all over the country.

MR. CURTIS: Have they any very high mountains, such as in California?

MR. SNEATH: Well, yes; when it comes to the question of grades they are very expensive.

MR. CURTIS: Do you think it takes more or less coal to go up the mountain from Sacramento to the Summit, ascending an elevation of seven thousand feet in one hundred and five miles, than it does in the valley?

MR. SNEATH: Perhaps you have heard it stated that the cable cars of San Francisco are run more easily on the hills than they are in the valleys.

MR. CURTIS: There might be a reason for that—that these cars are counterbalanced.

MR. SNEATH: It is on the same principle. You go over a grade of seven thousand feet on one side for a hundred miles, and then down on the other side. Going up you require a great deal of steam, but going down you don't require any.

MR. CURTIS: There is another element—the use of air brakes on descending grades. There is a great deal of wear on descending grades.

MR. SNEATH: Well, there is wear there; I have not given any thought to that. I have read a good many authorities that you could operate a road in the mountains about as cheap as you can in the valleys—just like a cable on one side of the hill pulls a car up on the other side of the hill. I have read all the Interstate Commerce Commission reports, and there is some first-class information in them in reference to the cost of operation.

MR. CURTIS: Is it not a fact, Mr. Sneath, taking whatever may be said as true about the winter resistance of trains over East, the grades of California so offset that, as a matter of fact, the whole year round, to move a car one mile it takes more coal in California than in the East? A. I think it would take less, on account of the grades. The heavy work in California, as I understand it, is towards the sea; the grade, as I understand it, from Bakersfield, is not over four feet to the mile, and the average grade in the whole State is between one and four feet to the mile. I haven't had it surveyed, but that is about the average grade. I took the railroad time tables as a guide, you know.

MR. CURTIS: Have you made those computations, Mr. Sneath? A. Yes, sir; the grades of California I don't believe can be any more per mile than in the Eastern States—I honestly believe it. Now, these gentlemen of the Central Pacific, as well as the other railroads of California, have not got out of the way of buying two-bit cigars, and have an expensive way of doing things. They are running along and trying to be better than anybody else, and the result is there is no profit here at all, no progress to anybody, and we think that the railroads are getting more than their share by a good deal.

MR. GAGE: You didn't think so during the war, along about the time you were trading and getting your share of the business in San Francisco—you didn't think so then? You were getting your share then, too.

MR. SNEATH: Well, that was a war measure—at that time we had to put everything aside on that account. Whenever it comes to a crisis you have got to do the best you can and get there in some way or another.

MR. GAGE: Charge it to the Central Pacific; that is the modern way of doing things.

MR. SNEATH: I am in favor of the Central Pacific getting a good round interest on the investment; but do not believe it is entitled to twice as much as anybody else. I think the Southern Pacific Company should be satisfied with a reasonable rate of interest. There is another point, in relation to the matter of labor. I notice by the report of the Southern Pacific that they employ 324 men per 100 miles of road. The average employed by all the railroads of the United States is about 479 to the mile of road. The average employed by these railroads in the East that have about the same revenue as the Southern Pacific, they employ nearly twice as many employes as the Southern Pacific, nearly twice as many.

MR. LANSING: Name one or two that have about the same earnings and employ twice as many employes.

MR. SNEATH: I think it is in the Interstate Commerce Commission reports. I think it is in the second or third group where they have a revenue of \$15,000 per mile, and where they employ 1,176 men to the mile of road. I think it is the second or third group.

MR. LANSING: They earn much more, very much more, don't they?

MR. SNEATH: They earn twice as much, and they employ nearly three or four times as many. You take the Michigan group, Michigan, Ohio, Indiana—I forget the number of that group, the fourth or fifth—and they employ about twice as many and have about the same revenue as the Southern Pacific revenue, about \$8,000 a mile, and there are six or seven hundred men, five hundred and seventy-six I think it is. I have it in my pocket book, but it isn't—

MR. GAGE: Let me ask you a question. Is it not true that you belong to what is called the Traffic Association, and is it upon the figures that you are giving us here to-night you are going to build the next trans-continental road? It is based upon that kind of figuring, is it not? A. I don't know. Really, I don't know. I am not interested in the railroad. I haven't taken any stock in it, and I haven't made any figures on it, and I don't think the Traffic Association has made any figures on it. This railroad question is entirely outside of the Traffic Association, but I don't think the Traffic Association as a body are interested in it.

MR. BURKE: What has that got to do with the question? We would like to get through with the points. A. It is claimed by the Southern Pacific folks that they are paying a great deal higher wages than they pay East. They are paying \$1 61 for nearly one third of all their people—\$1 61 for twenty-five or twenty-six days' work. Now, it strikes me for a married man, boarding himself, it is not very good wages—it seems to me they get about as much as that in the East.

MR. CURTIS: Do they get as much as that in the East, as a matter of fact? A. As near as I can find out by inquiry in various quarters,

wages here are not over 10 per cent higher at most. I was rather surprised they were only paying \$1 61.

MR. BURKE: I understood they were paying a little over \$2. A. I say that is for nearly one third of all their employes—that is the lowest class, you know. The engineers, they pay them \$4 32 per day; that is very good. I am paying that myself for engineers. I think from what I know of that business that that is not very far out of the way. I don't think they are paying for wages over 10 per cent more than the same help can be had for there; but I can't satisfy myself exactly how it is that they employ such a much smaller number, unless it is the fact that they make us shippers do all the loading and unloading. That is where the whole business comes in. The railroad folks do it on the other side, and, as I have said, I can't account for it in any other way. I don't see how they can handle that amount of material with so few men. But their argument in regard to the cost of fuel and labor is certainly not carried out by any figures I have seen yet.

There is nothing else, gentlemen, that I have to say.

MR. EARL: The matter stands submitted, then.

REPORT OF COMMITTEE.

SENATE CHAMBER, SACRAMENTO, February 23, 1893.

MR. PRESIDENT: Your Committee on Constitutional Amendments, to whom was referred Senate Constitutional Amendment No. 8, have had the same under extended consideration, and respectfully report as follows, to wit:

The proposed amendment strikes from the present Constitution those provisions establishing a Railroad Commission, and proposes as a substitute in lieu thereof the regulation of the railroad companies by the Legislature, as before the adoption of the new Constitution, save and except that a limitation is placed on the legislative control by a uniform maximum distance tariff for passenger and freight service, and also a freight classification known as the "Western Classification," comprising a quarto publication of some eighty pages. This uniform distance tariff and classification is made applicable to all the railroads in the State, some thirty in number, under independent ownership and control, regardless of the length of the road, or amount of business, or cost of construction or operation, or whether operated in mountains or valleys.

In the investigation of this amendment, your committee has had before it not only the advocates and proponents of the amendment, but also the representatives of a large number of the independent roads of the State, who were especially earnest in unanimous opposition to its adoption. Various amendments have been suggested by the proponents of the measure, which were designed to meet admitted objections to the original draft. The principal one of these amendments was designed so to classify the roads with reference to the amounts of their respective gross earnings, that nearly all of the so-called "little roads" should be exempted from the operation of the uniform maximum distance tariff in the measure, but otherwise leaving their rates subject to legislative control. Under the proposed amendment, if adopted, the duty of fixing passenger and freight rates upon all the roads of this State would be cast upon the Legislature, but as to roads whose gross annual earnings exceed four thousand dollars per mile, the legislative rates, no matter how small the net profits may be, could not exceed the constitutional schedule, but if the gross annual earnings per mile do not exceed four thousand dollars, the legislative rates, no matter how great the net profits may be, could be without maximum limit.

Your committee believes that it is not wise to confer upon the Legislature of this State the duty of fixing railroad rates. It would be a constant source of contention at every session, and with the constitutional limit of sixty days, the Legislature would have little time for the consideration of any other subject.

One of the main reasons for adopting the provision of the Constitution limiting the sessions of the Legislature to sixty days, was the removal from the Legislature of the vexed question of regulating the

rates of transportation companies. The people have recently overwhelmingly voted down the proposed amendment to the Constitution extending the length of the session of the Legislature.

The adoption of the present Constitution was an expression of the majority of the people of this State, that the subject of fixing rates of freights and fares should be removed from the legislative halls, and this conclusion was based upon years of experience. The establishment of a permanent Railroad Commission was believed to be a remedy for many evils attending the election of members of the Legislature, and attending every session of the Legislature. If the remedy has not met the expectation, but has disappointed the hope of the people, it is not necessarily the fault of the constitutional provisions establishing the Commission, but rather of the people themselves in their selection of the members of the Commission. A large majority of the States of the Union have Railroad Commissions, and the tendency is so strongly in favor of their establishment that it is believed that in a short time no State will be without its Railroad Commission. The Congress of the United States, for the regulation of interstate commerce and interstate railroad rates, has established an Interstate Commerce Commission, to which the entire subject of interstate rates has been referred. There is no effort made nor intention expressed anywhere to abolish this Commission and to refer the matter to the necessary investigation and direct determination of the Congress. In fact, the Interstate Commerce Commission is growing in favor as the proper solution of a difficult problem. Able, and fair, and honorable men compose this Commission, and there is no reason why as able, and as fair, and as honorable men should not compose the Railroad Commission of the State of California.

The people of this State have the power to make their Railroad Commission all that could be desired if they will take the care necessary in the selection of the members of the Commission. It is easier for the people to select three fit men for the Commission than one hundred and twenty fit men for the Legislature. The evils of a former system of direct legislative regulations are not so far behind us as to be forgotten or to require enumeration, and in the opinion of your committee it would be going backward for California to return to the system that produced those evils. Your committee is also of the opinion that to adopt as a part of the Constitution of this State a maximum or other schedule of uniform distance rates for passenger and freight traffic, and an eighty-page book of commodity classification, would be not only a grotesque departure from the accepted American idea of what a State Constitution should be, but would place rigid fetters upon transportation companies in this State, which would bring disaster to some of the industries of California, which could only be remedied by a repeal of the proposed amendment.

Your committee does not believe that it is practical or right that a uniform maximum distance tariff should apply to all roads alike, or to all sections of the same road. All roads or all sections of the same road cannot be constructed or operated at a uniform cost. To do this would be to utterly disregard the cost to the carrier of its service—an important factor in making fair and equitable rates.

As it costs more to construct and operate a road over mountains, grades, and curves, and through tunnels and snowsheds, than over level plains, it does not appear to be unreasonable that greater rates should

be charged where the cost to the carrier is great, and lesser rates where the cost to the carrier is small.

It is the opinion of your committee that if the amendment, as originally proposed, should pass, many of the short lines of railroads in California, which have been built by the communities through which they run and without help from others, would be destroyed in the hands of their present owners, and if their existence should continue they would pass into the ownership and control of other and larger roads, and would not confer the benefits their promoters rightfully expected. Above all, California needs additional railroad facilities. There are counties which for years have been working and hoping for railroad connections with the larger towns and cities of the State.

The proposed amendment, if adopted, would surely retard, if it did not permanently stop, railroad building, with all the advantages of competitive lines in California.

The principal objections to the proposed amendment have not been met by any changes suggested to your committee, and cannot be overcome by the earnest consideration and manifest good faith of its proponents and advocates.

Your committee therefore respectfully reports said amendment back to the Senate, with the recommendation that it be not adopted.

GUY C. EARL, Chairman.

We concur:

R. B. CARPENTER.

E. C. HART.



REPORT
OF THE
TESTIMONY AND PROCEEDINGS

IN THE MATTER OF THE

Investigation of the Charges made against Assemblyman
H. H. Johnson, of Santa Clara County, by James W. Rea,
before the Committee of the Assembly appointed for the
purpose of Investigating said Charges.

TESTIMONY.

WEDNESDAY EVENING, February 1, 1893.

Meeting of special committee to investigate charges made by James W. Rea against Assemblyman H. H. Johnson, of Santa Clara.

Members of the committee: Mordecai, Chairman; Hendrickson, Hurley, Bledsoe, and Bulla.

Reported by Bing. C. Brier, Official Reporter of said committee.

MR. CHAIRMAN: Now, gentlemen, you know the object of the meeting of this committee—to investigate the charges made by J. W. Rea against Assemblyman Johnson—and we want to decide our method of procedure.

MR. BLEDSOE: Do not we want to decide, Mr. Chairman, as to whether counsel shall be allowed to represent the respective parties?

MR. CHAIRMAN: I was going to say the first order of business would be to decide upon the method of procedure, and as to whether or not counsel shall be allowed, and in what order we shall take up the evidence. Mr. Johnson is not here. Sergeant-at-Arms, please see if you can find Mr. Johnson. Do we want to go on with testimony this evening?

MR. BLEDSOE: It seems to me, as Mr. Rea has made the charge, he is the one to prove it, and we might take his testimony.

MR. SHORTRIDGE: Mr. Chairman, if you permit me, by courtesy, I think, of course, that Mr. Rea should be entitled and is entitled to representation in form of counsel, and also to others in this very important investigation. I agree with the suggestion of Mr. Bledsoe that the charge having been made by Mr. Rea, that in one sense the burden is upon him to establish the truth of that charge. I think, as I say, in an investigation as important, not only to Mr. Rea as a citizen and as a high public official, but it is equally if not more important to Mr. Johnson, who perhaps also will desire to be represented by counsel, and further, over the interest that these two gentlemen have in this investigation is the great interest which the body of which you are members have in it, and through you the people of the State of California. Now, my idea of procedure is that the charge shall be upon Mr. Rea to prove, and he will be given an opportunity, of course under your control and guidance, to introduce testimony directly proving or tending to prove the proof of his charges. That thereafter, of course, Mr. Johnson personally, or each of you, or through your Chairman, having the full right and privilege, cross-examine the witnesses adduced or produced by the complainant, so to speak, Mr. Rea. That thereafter Mr. Johnson, either in person or by testimony of others, or through counsel, introduce whatever testimony he had in defense.

MR. HURLEY: I think Mr. Johnson should be here.

MR. SHORTRIDGE: It is not but fair to Mr. Johnson that he should be here. I will say in conclusion, gentlemen, that the procedure, I think, should be as I have stated, and that in your discretion the recalling of

witnesses in the nature of rebuttal should be allowed. Now, as to taking testimony to-night, I will be frank with you, and say I did not understand that testimony would be given to-night. The details of the testimony to be given by Mr. Rea have been gone over by him with Mr. Richards, who represents him in San José, and his other witnesses. I came here last evening in response to a telegram, and did not know the nature of the business that I should be called upon to serve in, and, as I say, I thought to-night it would be agreed upon as to procedure and the issuing of subpoenas and calling for papers, and so forth, rather than entering into the investigation by beginning the testimony.

MR. CHAIRMAN: Do you appear here as counsel for Mr. Rea?

MR. SHORTRIDGE: I do—of course, by your leave and courtesy.

MR. CHAIRMAN: I do not mean that you appear now, but in case counsel should be allowed.

MR. SHORTRIDGE: Yes.

MR. BULLA: I move that both Mr. Rea and Mr. Johnson be allowed counsel.

MR. BLEDSOE: I will second that motion, providing that counsel be restricted in their arguments to thirty minutes. It would subject the committee to unjust criticism if it did not allow counsel.

MR. BULLA: I place it upon this ground, that here is one of the most serious accusations that can be brought against any man, and therefore I would be in favor of giving the accused counsel, and also extending the same courtesy and right to the accuser.

MR. HURLEY: If we have counsel it will be necessary for us to have a shorthand reporter.

MR. CHAIRMAN: We have to have a shorthand reporter at all events. But to permit counsel would run this investigation too long. It strikes me to be the better plan to allow the gentlemen to introduce witnesses, and have them examined by the committee, and not to allow counsel on either side. I simply state that as my view.

MR. SHORTRIDGE: Mr. Chairman, will you permit me to make this suggestion? Of course, when the gentleman comes forward and charges a member of the Assembly with an offense like this, and he should fail to make out his proof, it is a question whether or not he might not be guilty of contempt of the Assembly. It is also a question of law as to the power of the Assembly to punish such a person for such contempt. The books are full of such questions. It is the greatest importance to Mr. Rea, as a witness before you, that he should know his rights. That he should make out his case if he can, and when questions are propounded to him, as undoubtedly you will put questions to him, he will know his rights as to answering them. I do not apprehend that any questions will be put in this investigation which he will not cheerfully answer, and yet his rights as to the future are very greatly involved in this investigation. For I presume if charges are made out this committee must recommend some action by the Assembly, and if they are not made out, I am frank to admit that it is within the scope of the Assembly to take some action possibly towards Mr. Rea. So that the parties should know their legal rights, and, of course, as this investigation is under your control, personally, I have no disposition to prolong it, I assure you, because my affairs in San Francisco are being neglected by my being here, and I will try to finish this matter as speedily as possible, and I presume so would Mr. Johnson.

MR. BLEDSOE: If both Mr. Johnson and Mr. Rea desire to have counsel, wouldn't it be better, even if we had any doubt about the matter, to decide in favor of allowing the gentlemen to have counsel, because it will be in the power of the Chairman always to curb the prolonging of matters and to decide upon the admissibility of testimony.

MR. CHAIRMAN: It rests entirely with the committee as to whether they will allow counsel or not, and before I put this motion I think it is no more than justice to Mr. Johnson to hear from him before this proposition is decided. As far as I am concerned, I feel that the committee will be in better shape not to allow counsel.

MR. BULLA: If the offense charged were any less grave I would feel different about it.

MR. CHAIRMAN: As I understand it, an investigation of this character does not take the same form that a trial before a Court does; that there is much more latitude allowed in the examination of witnesses, and not confined to the rules of law so much as in cases in Courts of justice.

MR. BLEDSOE: The Chairman of the committee can restrict the testimony to certain lines of evidence as being admissible, and he can rule out what does not bear upon the question.

MR. CHAIRMAN: Mr. Johnson was invited to be here at seven o'clock, and told that the committee would be here ready and waiting for him, but he does not appear. While we are waiting, the mode of procedure as to taking the testimony might be decided. I would like to have the views of the committee as to the proper method of procedure—which side should be heard first, and which has the closing, and so forth.

MR. BULLA: I think Mr. Rea should prove his case, and that Mr. Johnson should then put in his defense.

MR. CHAIRMAN: Then as to rebuttal evidence, what would you say?

MR. BULLA: The rebuttal testimony is with us. It seems to me we ought to get the "Chronicle" of that date and see what the charges are.

MR. CHAIRMAN: I do not think we can or should do anything in the absence of the defendant. He is the principal actor in the play, it seems to me.

MR. BLEDSOE: I move, to bring the matter before the committee, that the method of procedure be this: that Mr. Rea, being the prosecuting witness or accuser, produce his testimony, and when he has finished, Mr. Johnson produce his, and let the matter of rebuttal testimony be decided afterwards by the committee, and that upon the argument of the matter the attorneys for each side be allowed thirty minutes.

[The motion was seconded.]

MR. CHAIRMAN: In the absence of Mr. Johnson it is utterly impossible to take further steps in this matter.

The Sergeant-at-Arms here produced Mr. Johnson, and the Chairman stated to Mr. Johnson the discussion as to procedure, and the nature of the motion made by Mr. Bledsoe.

Mr. Bledsoe's motion was then adopted, and the committee then adjourned until next Tuesday evening at seven o'clock.

TUESDAY EVENING, February 7, 1893.

Meeting called to order, and Mr. Hendrickson absent.

MR. CHAIRMAN: I will state, gentlemen of the committee, that this is an investigation into the matter of the charges by J. W. Rea against Assemblyman Johnson, of Santa Clara County. I will read the resolution passed by the House. (Reads.) (To Mr. Johnson): Who is your attorney in this matter? A. Mr. Henry McPike and Mr. Clunie.

MR. CHAIRMAN: Who are the attorneys for Mr. Rea?

MR. SHORTRIDGE: Mr. John E. Richards and Mr. Shortridge.

Both counsel stated they were ready to proceed.

Upon the request of Mr. McPike the witnesses were excluded from the committee-room, and directed not to speak with each other about the case, nor with any one except counsel in the case.

JAMES W. REA,

Being called and sworn, testified as follows:

MR. SHORTRIDGE: Your name is James W. Rea? A. Yes.

Q. Where do you reside, Mr. Rea? A. Santa Clara County, in the city limits of Santa Clara, on the Alameda.

Q. How long have you lived there? A. Since 1879 where I live at present. I was born in Gilroy, in the lower part of the county.

Q. What is your business? A. Well, I have several.

Q. Several? State particularly. A. I am in the berry business, horse raising, dealing in real estate, and lighting business.

Q. In that county? A. Yes.

Q. County of Santa Clara? A. Yes.

Q. What official position, if any, do you occupy? A. Railroad Commissioner from the Third District.

Q. How long have you been occupying that position? A. Six years, one term and a half.

Q. You are now upon your second term as Railroad Commissioner? A. Yes.

Q. Succeeded yourself, did you? A. I did.

Q. Do you know Assemblyman H. H. Johnson? A. I do.

Q. How long have you known him? A. I never met Mr. Johnson but twice. Never met him to speak to him but once.

Q. And when was the meeting—when you met him to speak with him—about when? A. It was about the 7th or 8th of December, Wednesday or Thursday, or the week preceding that.

Q. What year? A. Of last year, 1892.

Q. Where did you meet him? A. I met him in the private office—well, I met him in the office of the Electric Improvement Company.

Q. Where is that? A. San José.

Q. On what street in San José? A. Well, it is not located on a street; it is a portion of quite a large building which is located on Santa Clara Street.

Q. What time of the day was it you met him? A. Close to eleven o'clock, or five minutes after, I think.

Q. State how you came to meet Mr. Johnson at that time, and at that place?

MR. BLEDSOE: Eleven o'clock in the morning? A. Eleven o'clock in the morning. The first I heard of Mr. Johnson was through a friend

of mine by the name of MacKenzie, who came to me and said that Mr. John Somebody, a gentleman whom he knew—

MR. MCPIKE: I object to any testimony to what any one said, as hearsay.

[Objection sustained.]

MR. SHORTRIDGE: Who made the appointment, Mr. Rea, for this meeting in question? A. For the meeting in question, Major Barrington.

Q. Had any other appointments been made, or any meeting between you and Mr. Johnson had? A. Well, not so reported to me.

Q. You had made none personally to him? A. No, sir; but I had refused to make a great many.

MR. MCPIKE: I move to strike out the answer.

[Motion denied.]

Q. Do you know whether he had sought to meet you in your office? A. Yes.

Q. On how many occasions had he endeavored to meet you, if you know? A. As reported to me?

Q. As you know? A. Well, saw him there once myself.

MR. MCPIKE: I move to strike out the answer, as not responsive to the question.

[Motion denied.]

A. Now I can answer the number of times the appointments were made?

Q. You saw him there once? A. Well, one day Mr. Bethell came to me and told me he was there, waiting for me there in the office. I was outside; he came to me and said that Mr. Johnson was in the office and wanted to see me, and I told him that I did not want to see him. He said that he had told Mr. Johnson that he knew right where I was. I told him, I think this is the language, "Well," I said, "he wants money and I do not want to see him."

MR. CHAIRMAN: Confine yourself to the facts, if you can. A. There was a number of times reported to me that he would be there, and once or twice that he was there. I only want to get myself straight by giving the times I know.

MR. BLEDSOE: You say a number of times that it was reported to you that he would be there; did these persons that reported that claim to come from Mr. Johnson? A. Yes, they did.

MR. SHORTRIDGE: Who were the persons referred to? A. I will commence at the beginning. The first I heard of Mr. Johnson was through Mr. MacKenzie. He told me that a young gentleman by the name—

MR. BULLA: It seems to me not proper to state conversations between himself and others out of Mr. Johnson's hearing.

MR. SHORTRIDGE: Who were the witnesses that informed you from time to time? A. That he wanted to see me?

Q. Yes. A. There was Mr. Bethell and Mr. MacKenzie. And then the other times, I know—well, then, others reported they were there and saw him.

Q. The names that purported to have come from Mr. Johnson? A. Well, I do not know whether Mr. Edwards—

Q. Did Mr. Edwards—I do not wish to lead—did he tell you that Mr. Johnson had been to see you? A. Yes.

Q. Did any one else tell you he had been to the office to see you

besides the ones you have named? A. I think those are all, with the exception of Archie Tisdall; he is the collector for the Electric Improvement Company. He came to the door one day with Mr. Edwards, the Superintendent and Manager of the Electric Improvement Company, who was attending to some business in the private office, and he said, "Here is a gentleman wants to see you." He knocked at the door, and I went to the door and opened it, and Mr. Johnson was standing at the counter, and I sent word I didn't want to see him, and told him I was busy, and I turned around and closed the door, and I didn't see him that day. The next time that I heard—

Q. That was after the late election in November? A. Yes.

Q. And he had come to your office, and was there in your office? A. Yes.

Q. You say you did not see him on that occasion further than you have stated? A. No, sir.

Q. Why did it happen you did not see him when you were sitting in your office; how did you escape? A. I went through the back office, and he waited a half hour or so, they told me.

Q. He was waiting for you, and you did not go out to see him? A. I did not.

Q. When was the next time you saw him in your office? A. The next time I saw him in my office was by an appointment that I agreed to keep, made by Major Barrington.

Q. Did Major Barrington make the appointment on behalf of Mr. Johnson, if you know? A. I kept the appointment, and he was there. I was on the street talking to some friends in front of the Auzerais House; Major Barrington came along and said: "Mr. Rea, Mr. Johnson, the Assemblyman"—I think he named his district—"wants to borrow \$100, and he wants to make an appointment to meet you the next day at our office."

Q. Did Mr. Johnson come to your office the following day? A. Yes.

Q. And by your office you mean on Santa Clara Street? A. Yes.

Q. At what day and hour? A. At eleven o'clock. I was a few minutes late, and the Major and Mr. Johnson were there. I was a few minutes late.

Q. And by the Major you mean Mr. Barrington? A. Yes.

Q. Who is Mr. Barrington? A. He is the editor of a paper by the name of the "Democrat."

Q. A weekly paper published in San José? A. I think it is a weekly paper, or semi-weekly; I know it is not a daily.

MR. BLEDSOE: Did Major Barrington, when he met you on the street, claim to come from Mr. Johnson? A. Yes, he did.

Q. You will please now proceed and state the conversation had between you and Mr. Johnson, on the occasion you have just named, the time when you got to your office as stated, and Major Barrington, if he was a party to any of the conversation? A. Well, I invited them into the private office, and Major Barrington introduced me to Mr. Johnson. As near as I can recollect he said, "Mr. Rea, this is Assemblyman Johnson, he wants to borrow one hundred dollars; he is friendly to your Commission, and will sign a paper to that effect." I says, "Be seated, gentlemen;" and they were seated; Mr. Johnson about three feet from me, and the Major a like distance, and me in a position in front of Mr. Johnson, and to the right of Mr. Barrington. The Major

arose, after some few remarks passed, the Major arose again and he says, "Mr. Rea, here is Mr. Johnson's security. I have drawn the note up making it payable to bearer, making it negotiable by making it payable to bearer. It is indorsed by Mr. Stats, or Mr. Slats.

MR. MCPHIE: Mr. Slagts? A. Yes. And he proceeded to discuss the solvency of Mr. Slagts, or Stats, or whatever his name is. I arose from my seat and he handed me the note, or he handed it to me a little before, I do not know which. I know I had it in my hand. The Major is quite a talker. I said, "Major, I don't care anything about the note or its indorsement; Mr. Johnson and I understand each other perfectly well." I turned to Mr. Johnson and handed him the note. I said, "Mr. Johnson, Mr. MacKenzie spoke to me about you and what you want, and what you want, as a cold-blooded matter, is one hundred dollars." He said, "Yes." I said, "Mr. Johnson, you signed the contract with the Traffic Association," I said, "did you not?" "Yes." "Agreeing to stand by them, and how do you account for the fact that you are now willing to sustain the Commission?" "Well," he says, "that was during the campaign, and there was a number of votes out in the Willows that I could not secure without signing that contract, and therefore I signed it. But it does not cut any figure now, as long as I have sense to know that I will never be elected again, and there is a number of others in the same fix." I says, "Will these people vote to sustain the Commissioners, like yourself?" He says, "Yes; they will." I says, "How do they stand on United States Senator?" He says, "We have not yet made up our minds. We have agreed to go to Sacramento, and we will make up our minds then," I think he said, "and stand together." I said, "Are these people all out for the money, like yourself?" He said, "They are." "Yes," I think he said. I said, "Could they be had to vote for a Republican United States Senator?" "Well," he says, "it is pretty hard for them to leave their party. I think so, however. One, though, I know will if it is made a sufficient object." I says, "Mr. Johnson, would you have any objection to writing their names down, and the districts that they come from, that I might not make any mistakes as to their names?" He said, "I have none, I have no objection." He felt in his pockets for paper and pencil, as I supposed. He said, "I might not the districts," the number of the districts, I mean. He said, "I have a card," and he said, "Major, I handed it to you this morning"—Major Barrington.

Q. Was Major Barrington listening to this conversation all the time? A. Yes. He was two and a half or three feet from me. When I silenced him, then he moved over to the lounge and sat there all the time.

Q. In what tone of voice were you and Johnson conversing? A. I was conversing and aimed to converse in a loud tone of voice.

Q. Were his answers in such a tone that Mr. Barrington could hear? A. Yes; his answers were loud.

MR. CHAIRMAN: Did you state that there was no one else present at the time of this conversation? A. Yes; Mr. Barrington was there and Mr. Edwards passed through the room.

Q. Was he there at the time of this conversation? A. Yes; Major Barrington.

Q. Was any one else in the room besides Major Barrington? A. At the time that I said to Major Barrington, I seated him, that I didn't

care anything about the note and the indorsement, Mr. Edwards opened the door and entered the room and entered through the door, and went to the door that opens from the inside only.

Q. Did not remain in the room? A. No, sir; he passed on through. Mr. Barrington went in his pocket, I think he had it in a pocket book, and pulled it out, and, if I remember, he also took a pencil. I said, "Mr. Johnson, you be very careful; don't you mark a man on that card that you are not positive will vote for the United States Senator if paid enough." He said, "I cannot guarantee but one." I think he said he was a shopmate of his—worked in the shop with him—although he mentioned several, one a schoolmate, and where he had known him. He said, "I cannot guarantee but one." I said, "Mark them," and he took the Major's pencil and marked a name.

MR. McPIKE: Where is that card?

MR. SHORTRIDGE: We have it, or we will show where it is.

MR. McPIKE: I object to the contents of the card until it is here.

MR. CHAIRMAN: Let the witness proceed without giving the names on the card.

MR. SHORTRIDGE: Did he mark any more than one name? A. Yes. [Objected to.]

Q. Did he mark more than one mark on that card? A. Yes.

Q. Do you know how many he did mark?

MR. CHAIRMAN: Proceed with your testimony, but do not give the names of any persons or anything on that card.

MR. SHORTRIDGE: Where was Major Barrington while this was going on—how far distant from Mr. Johnson—about how far? A. I suppose six feet.

Q. About how far were you from Mr. Johnson when he had this card? A. From here to you.

Q. I understood you he got the card from Major Barrington, and also borrowed the pencil from Major Barrington to mark the card? A. Yes.

Q. When he finished marking what did he do? A. He just marked once opposite a name and started to hand me the card, and said: "I have marked that too far from the name, I better take it again and mark it up to the name." So he marked from the name back and arranged two marks opposite the first name and handed me the card and the Major his pencil. "Now, these other parties you mentioned are out for money on every proposition except a United States Senator?" I said. "Yes," and then I handed my pencil to him and said, "You mark those names." I said, "Don't you mark any names that you are not positive of." He then proceeded to mark his own name.

[The Chairman ordered the words "Mark his own name" stricken out.]

Q. This is regarding another card now? A. The same card.

MR. CHAIRMAN: I thought you testified just now that you took the first card and then he handed you another card? A. I testified to handing me the card, and I looked at it, and he handed the Major's pencil back to him.

Q. And then you handed a pencil to him? A. Yes.

Q. I understood you to say he marked for United States Senator? A. Only one for Republican United States Senator.

Q. That made five marks altogether? A. Yes, five marks altogether; yes.

MR. SHORTRIDGE: When he first returned the card to you he had marked but one name? A. Yes.

Q. And then you returned it to him and he placed other marks on it? A. Yes, I said also that he could mark them with one mark and the other with two, so I could distinguish. The United States Senator with two marks and the others with one mark.

MR. BULLA: Was that done? A. He made two marks opposite the first name. That is, he did not mark it close enough the first time, and then he marked it closer, and then he marked the others with one mark.

MR. BLEDSOE: What were the two marks for? A. That was he would vote for United States Senator.

MR. CHAIRMAN: That is, the first two marks would indicate he would vote for United States Senator? A. Yes.

Q. And the other marks was for who would vote for all other propositions? A. Yes.

MR. SHORTRIDGE: On what condition was it that he would vote for United States Senator? A. On condition that he would get money.

MR. BLEDSOE: Was the name of the candidate for United States Senator mentioned? A. No, sir; it was not.

Q. Who was your candidate? A. I didn't have any in that fight. I had got out of that fight.

MR. SHORTRIDGE: Were there any names mentioned for United States Senator during that conversation? A. There were, but not from the Republican standpoint.

Q. Was there any or not? A. I said during this conversation there was no chance for a Republican United States Senator. Mr. Foote and Mr. White, I think, and others were mentioned.

Q. Take up the thread of the statement from the marking of the card? A. I said, "Mr. Johnson, so you are willing to sign a contract, are you, signifying your willingness to stand by the Commission." "Well," he said, "I wouldn't like to sign a contract, but," he said, "I will pledge my word and honor I will stand by the Commission." "Well, Mr. Johnson," I said, "I would like to explain to you this railroad situation," and proceeded to do so from my standpoint.

Q. State the conversation? A. I say of course the contest between the Traffic Association, Major Leeds of the Traffic Association, and this Commission, as you know, has become quite heated and spirited. Mr. Leeds claims a great many things that he is not entitled to claim. I said at first that Mr. Leeds came to the Railroad Commission; he came on the proposition of an investigation. The question of difference between Mr. Leeds and this Commission was as to whether he should file the complaint, or whether a complaint should be filed, or whether the Commission will proceed without complaint and upon their own motion, and I explained my position and understanding from the Commission, and throwing all responsibility and expense upon them; and on the other hand, that I had explained to Mr. Leeds that he was Manager of the Traffic Association, a combination of gentlemen who were very wealthy, and that he himself was expert in railroad matters, and had all the confidence of his employers, and that if he should file the complaint that I would guarantee him, that so far as I was concerned, that he should have an ally in the Commission equal to any in the Traffic Association. That we would place at his disposal the powers of that Commission to disembowel the railroad company, bringing

from it every detail of their business, and bring it out before the public, and he could have their hands tied, and that I reserved only one thing, and that was to have a fair and impartial conclusion to everything about the facts as brought out. Mr. Leeds told me that he did not care to regulate the railroad company; that on the contrary, he was friendly to them; that all he wanted was agitation; that he won his fight in that way. I contended with him that his people would not sustain him, that they would abandon him; but he assured me that he not only had the members of the Press Association, but assumed the people could not go back on him. I told him I would make him show his hand before the contest was ended, and it was unfair for him to use the Commission and place them in a position that they could not act in justice to their official oaths and in justice to the people of the State. That Mr. Shively filed a complaint in the Commission; then all was removed as regards Mr. Leeds and the Commission, as far as the investigation was concerned.

Q. This language that you are now giving came out in the conversation with Mr. Johnson and in the presence of Mr. Barrington? A. Yes. But when the complaint was filed Mr. Leeds again changed his position and asked the Commission to give the railroad company a horizontal rate of twenty or thirty per cent and apply it to the western schedule—a classification which I contended, which my decision showed was not only illegal but was unfair and unjust, because the railroad did not have a hearing. Aside from that if it was done and as he wanted it, and included their rate over the State, that within thirty days from the time the law went into effect there wouldn't be an engine on the car in any place in California. And he still contended that that should be done. "Now," I said, "Mr. Johnson, you are going to the Legislature. Mr. Leeds has made a great many friends. He was going to have me impeached and going to mend the Constitution and I presume—I don't know, but I presume—he will meet you and your Legislature, and as I said to you before, and I say to you now, that the Legislature dare not pass any such proposition, and you will not come away from Sacramento, and it will not be done, because it would raise from every district in the State and all the people will rise up as a unit as soon as it is found out the effect upon the industries of the State. That the papers had criticised us. Mr. Leeds was going to criticise us because the proposition was never carried before the people of this State nor presented before them, and that they would be in a very embarrassing position before they got through." That is about all that occurs to me.

MR. CHAIRMAN: This conversation was addressed to Mr. Johnson or to another person? A. I was talking to Mr. Johnson. He says to me, "I understand there is nothing in it; that Mr. Leeds is out for his point, whatever it is, and that it does not cut any figure with me." Then I broke off the conversation, saying I was hard up, and had just paid my taxes. I also stated to Mr. Johnson, in reference to my record as a Railroad Commissioner, not only this term but the last one, with the exception of one decision, every decision had been against the railroad company and in favor of complainants. He seemed to agree with me thoroughly. And then I broke the conversation and said I would meet him. I says, "You meet me at this office next Saturday at eleven o'clock." Mr. Barrington said, "Excuse me, Mr. Rea, I would like to see you a moment," and he took me outside and made an explanation.

[Objected to.]

MR. BLEDSOE: What became of the note, Mr. Rea? A. I gave it to Mr. Johnson at the outset; I didn't have it only a second, not over a minute.

MR. SHORTRIDGE: At any rate, you turned to him and said you did not want his note, and did not care anything about the indorsement?

[Objected to as leading.]

Q. What did you say when the note was given back, or when you handed the note back to Mr. Johnson? A. I said to the Major that I did not care anything about the note or its indorsement; that Mr. Johnson and I understood each other perfectly well. I turned to Mr. Johnson and I handed him the note at that stage of the proceeding.

MR. BLEDSOE: Was Mr. Johnson present? A. Yes, he was sitting three feet from me.

Q. You stated that you had only met Mr. Johnson once to speak to him? A. That was the first time.

Q. What did you mean by saying you and he understood each other perfectly well? A. Because Mr. MacKenzie had reported to me Johnson's desires and wishes in the matter.

MR. BULLA: That was all that was said about the note? A. Yes.

MR. SHORTRIDGE: What did he say to you when you made that statement? A. He said, "Yes." When I said "As a cold-blooded matter of fact is a hundred dollars," he said "Yes."

Q. In regard to this note, you say this note was handed to you? A. Yes.

Q. And you also stated, as I understood it, that you did not look at that note? A. I might have looked at it. I didn't examine it.

Q. You could not swear, as a matter of fact, that it was a note at all? A. I could swear it was in the shape of a note. I didn't examine it at all.

Q. You say you did not examine it; then you do not know what it was? A. I supposed it was a note. I am satisfied it was, but I could not swear to it.

Q. You did not look at it to swear whether it was a note or any kind of a piece of paper? A. No, sir; I did not, but I am satisfied it was a note.

MR. SHORTRIDGE: You said it was a note? A. The Major said so.

Q. And who was the indorser? A. Mr. Stats or Mr. Slagts.

MR. BLEDSOE: When you asked Mr. Johnson to mark off the names of those men who might be got for United States Senator, did he ask you who your candidate was for United States Senator? A. No, sir. It just seemed he didn't care who the United States Senator was, he wanted the money.

MR. CHAIRMAN: Strike that out.

MR. SHORTRIDGE: What was his manner during this conversation; his general deportment and manner? A. He sometimes seemed a little nervous, and he crossed his legs a good deal. I remember that, first one and then the other, and looked down a little. I do not know exactly how to express that, except he was talking business, and seemed confident of his promises.

Q. About what time did the conversation terminate, do you remember? A. No, I do not remember. We talked a long time. I couldn't tell you, it might have been an hour, and it might have been a half hour.

MR. BLEDSOE: You say it was about eleven o'clock when the conversation began? A. Yes.

Q. Did you adjourn for lunch? A. I did not go to lunch, no. The Major and he went off together.

Q. Do you remember what time he and the Major went off? A. No, sir; it would be merely guess work. I would say it was probably forty minutes.

Q. It was quite a long conversation? A. Yes; I haven't probably stated half of it.

MR. CHAIRMAN: So far as the witness has stated, Mr. Johnson stated very little at that interview? A. He spoke whenever it was necessary; the Major did most of the conversing at first, until I began the conversation.

Q. Mr. Johnson seemed uneasy? A. Yes, he was uneasy.

MR. BULLA: State what Mr. Johnson said at that time? A. He did not say anything at the beginning of the conversation; when he was introduced he didn't say anything.

Q. Did he say anything when this note was handed back? A. He laughed with a kind of significant laugh, as though we understand each other.

Q. When the note was handed back, did Mr. Johnson say anything at that time? A. I just made the statement as a cold-blooded matter of fact, and I said "You want a hundred dollars." And he said, "Yes."

Q. That is all he said? A. Yes, that is all he said. We understood each other, and proceeded on that basis.

MR. BLEDSOE: Did you at any time give him a hundred dollars? A. I did not; no, sir.

MR. BULLA: Did you make any arrangement to give him a hundred dollars? A. I did not, sir. I made the appointment.

MR. CHAIRMAN: What appointment? A. Next Saturday at eleven o'clock.

Q. What was it to be paid for? A. His vote on the Railroad Commission.

Q. Who was to pay that? A. That part of the contract was never consummated, but of course I was.

Q. Who was to pay the money? A. I was to pay if anybody, in his mind.

MR. BULLA: Who was to pay that? A. It was to come from me, I suppose.

Q. Pay it out of your own money? A. It was not paid. Yes, of course; I suppose so.

Q. Don't you know, you made the contract? A. I do not know what I was thinking about.

Q. I am not asking you what you were thinking about. A. If it was to be paid I was to pay him out of my own.

Q. If it was to be paid, it was to be paid out of your money? A. I avoided that. I avoided it by making another and subsequent appointment. I told my attorney of the appointment after Major Barrington told me. He was in the front office.

MR. CHAIRMAN: In this interview at which a note was tendered to you, and at which you stated that what he wanted was a hundred dollars, and you now state that there was no arrangement by which the hundred dollars was to be paid to Mr. Johnson, either by you or by

any one, to your knowledge? A. No further than that, and the inference by making the appointment for the following Saturday.

Q. Did you go by inference by that matter? A. No, sir; except that there was the proposition.

MR. SHORTRIDGE: Did you promise to give that money—did you agree to give it yourself or by any one else, to give the hundred dollars? A. No, sir.

MR. BLEDSOE: Did he say that he would take that much money for his votes, during any part of the conversation—did he say that he would take a hundred dollars for his vote? A. Well, he was introduced to me for that.

Q. Did he say he would take that for his vote? A. The idea was if I gave him the hundred dollars, he would sell for that.

MR. SHORTRIDGE: You asked him if he would stand by the Railroad Commission for the hundred dollars? A. I did not say, "Will you vote for the Railroad Commission if I give you one hundred dollars?" I didn't state it in that language at all. That sort of trade was not made. But the proposition of Mr. Johnson was, and his business to see me was, and his whole conversation, that he wanted money not only on the Railroad Commission, but on every other proposition; he wanted to get in right, he said.

MR. BULLA: Did he state this proposition to you? A. That he wanted to get in right?

Q. Did he state these propositions to you? Please give us his own language, as near as you can recollect, wherein he stated this proposition to you, generally, that you just now stated? A. One proposition was, he said he could guarantee one for United States Senator if enough money was paid. Of course, the contract was not paid, signed, and delivered.

MR. BULLA: Go on, and state Mr. Johnson's proposition. You stated that Mr. Johnson said that he would get one for United States Senator, if the guarantee was sufficient. I wish you would go on, and state Mr. Johnson's language in reference to the other proposition, and all he said. A. I asked him if they were all out for money, like himself. He says "Yes;" that they would stand by the Commission. He first stated that they all signed a contract; he didn't say that, but said they were all in the same fix he was. He said they were all signers of the contract of the Traffic Association. I did not know, of course; I didn't know whether it was a fact. I did not know, as a matter of fact, only what he stated in reference to it. He said, "If made a sufficient object," he said, "we can get them all, I think. But," he said, "I will have to see them." When I asked him to mark the names, he marked them with my admonition not to mark anybody that he could not deliver.

Q. That is all that was said? A. Well, I have repeated it mostly. There were other things said that I cannot just recollect now; but I know we took in the Railroad Commission—included everything in a lump, except Republican United States Senator.

MR. BLEDSOE: What were the last words of Mr. Johnson on that day? A. Just "Good day." They just went out.

Q. Did Mr. Johnson say to you that he would see you again? A. He kept the appointment, I understand.

MR. SHORTRIDGE: You made an appointment? A. I made an appointment the following Saturday at eleven o'clock at the same place.

Q. Was Mr. Barrington present when you made the appointment with Mr. Johnson? A. He was. He was present at all of this conversation.

Q. Do you remember the language used in this conversation? A. I think I said "I will meet you at this office next Saturday."

MR. BLEDSOE: What was the language of Mr. Johnson? A. "All right."

MR. BULLA: Did you state what you would meet him for? A. No, sir; but the understanding was, I was going to put up a hundred dollars.

Q. How did you and Mr. Johnson arrive at that understanding? A. Well, I have stated the conversation, and that is the way I arrived at it.

MR. BLEDSOE: What did you do with the card? A. Well, I deposited the card with the Commercial Savings Bank on the 28th of last month. Put it in the escritoire with the Cashier.

Q. Mr. McGeoghegan? A. Yes.

Q. Did I understand you to say that on the following Saturday Mr. Johnson was there to keep the appointment, but you were not? A. Yes; it was so reported to me.

Q. You do not know of your own knowledge? A. I did not meet him; I was at the ranch.

MR. SNORTRIDGE: You have stated all the conversation on that occasion? A. Well, all that occurs to my mind.

MR. CHAIRMAN: Did you see Mr. Johnson on the following Saturday? A. Yes.

Q. Have you seen Mr. Johnson or had any interview with him since that time? A. No, sir; not to talk with him. I just nodded to him that day.

Q. You haven't spoken to him since that day? A. Only to nod to him.

MR. BLEDSOE: Have you met him at any time in Sacramento? A. No, sir; I have not. I saw him on the street, and some gentleman introduced me to Mr. Johnson.

Q. You have met him and have saluted him? A. I have met him.

Cross-Examination.

MR. MCPIKE: Mr. Rea, you were going on to state a few minutes ago, when you were interrupted, that after you had made the appointment with Mr. Johnson to come back on Saturday, and that you would give him a hundred dollars, that you consulted your attorney? A. I did.

Q. Which one was that, Mr. Richards? A. Mr. Richards.

Q. He was in the office then? A. Yes.

Q. What was the object? A. The object of consulting Mr. Richards was to keep myself right. I had consulted Mr. Richards on the outset. It was not the first time I had been or there had been an attempt at blackmail, and I felt that I was being outraged, and Mr. Johnson had met me through other sources, and I knew exactly what his intentions were before he met me at all, and I thought if that is the kind of people that are going to legislate upon me, that it was no more than right that the members of this Legislature should know it, and the people of the State.

Q. Who else tried to blackmail you? A. Mr. Robinson, of Alameda,

in reference to the ferry commutation ticket. At Oakland you will see that I decided twice in favor of Mr. Robinson, and compromised with the people of Oakland, and he came to Mr. Abbott, and he said that he would settle the difficulty for seven thousand dollars. That we could go down to the railroad company and get it as quick as that, although he has blackmailed us all over the neighborhood.

[The Chairman ordered the answer stricken out.]

Q. That was the first time you ever heard of Mr. Johnson? A. The first time I ever heard of Mr. Johnson was a week or ten days after election, when Mr. MacKenzie came to me and said that a young gentleman came to him and said—

Q. I asked you if that was the first time you met him? A. A week or ten days after election.

Q. When was the first time you ever saw him? A. That I ever got my eyes on him?

Q. To know him? A. It was shortly after election; he was pointed out to me on the street.

Q. Did you know him then as Assemblyman Johnson by sight? A. I knew he was an Assemblyman.

Q. You knew that an Assemblyman was elected by the name of Johnson? A. He was just pointed out to me on the street, the same as you or anybody.

Q. Casually? A. Yes.

Q. You would not have known him to speak to him, or known him to associate his name with his person until he was introduced to you by Major Barrington in your office? A. Well, I would have known him if I met him on the street, but I never met him or had any relations with him. But I had seen him on the street once or twice, and had him pointed out to know who he was.

Q. When Major Barrington came, or before Major Barrington spoke and said "This is Assemblyman Johnson," you knew who he was? A. I did.

Q. Did Major Barrington have the note in his hand when he came in? A. If he did not he did soon afterwards.

Q. He had it in his pocket? A. Yes.

Q. And Major Barrington commenced the conversation? A. He did by introducing him. Q. And he said to you that Mr. Johnson wanted to borrow one hundred dollars? A. He did on the note.

Q. And then handed you the note? A. I think we sat down first, but he may have handed me the note just as we sat down. I think he got up and handed me the note.

Q. When was it that you said you did not care whether Mr. Johnson was solvent or not, or whether Mr. Slagts was solvent or not? A. That was the second time when Mr. Barrington referred to the note.

Q. Did Major Barrington do nearly all of the talking? A. He never spoke afterwards to him. He sat back there, as though plucked of his feathers.

Q. He never did do much of the talking? A. With the exception of the card, I do not think he spoke much. But I do not think he spoke much. My recollection is he did not speak at all until he met me outside.

Q. Did Mr. Johnson have a great deal to say? A. Yes, he talked a good deal.

Q. Didn't you testify a little while ago in your direct testimony that Major Barrington did all the talking and that Mr. Johnson had but very little to say? A. When the Major is talking he has it his way. When Mr. Johnson and I were talking he didn't talk.

Q. Didn't Major Barrington come in and state to you that Mr. Johnson wanted to borrow one hundred dollars on a promissory note; that Mr. Slagts had indorsed it; that he knew the note was good and knew he had indorsed it, and wanted you to loan him some money; and didn't you begin to talk immediately about your taxes, and begin to talk about your money; and didn't Major Barrington say at the time if you will let Mr. Johnson have this money Mr. Johnson will stand in and let you have anything you want and will vote for you in the Legislature? A. He did not.

Q. And didn't you say he was willing to put it in writing, and didn't Mr. Johnson say immediately, "I am not that kind of a man," and immediately left the office? A. No, sir.

Q. Who is Major Barrington? A. Major Barrington is the city editor of papers that have been subsidized for fighting me, ever since he has been in town until he was the editor and proprietor of the "Democrat."

Q. What is the "Democrat?" A. I do not know. It is a Democratic paper, straight.

Q. Is it a stock company? A. I do not know anything about it at all.

Q. Have you ever contributed anything to the support of the "Democrat?" A. I have not. I have not paid my subscription.

Q. Have you advertised in it? A. Not that I know of.

Q. Have you ever paid Major Barrington any money? A. Not since he has been editor of the "Democrat," I do not think.

Q. There is a fight going on down in San José, known as the saloon fight, is there; what is commonly called the whisky fight? A. Well, I believe that interest has been involved somewhat, yes.

Q. And Major Barrington's paper is supporting the whisky side of the question? A. In fact, I do not know. I have not read that paper enough to know.

Q. Is it not a fact that you and Major Barrington have, both of you, been making that fight together, and you have contributed to Major Barrington's paper to make that fight, and are not you and he intimately connected in business matters? A. No, sir; and we never had any business transactions together, either in a whisky fight or any other fight.

Q. How well did Mr. Barrington know you? A. He don't know me very well. Just meets me.

Q. That is all? A. That is all.

Q. How does it happen that Major Barrington came to you, if he didn't know you very well, and try to sell a legislator? A. You do not know the Major. He has traveled all over the world.

Q. Is it on account of his acquaintance with you? A. I thought the Major and him were in together at first, and I looked at him with suspicion.

Q. The Major seemed abashed at the proposition to have Mr. Johnson stand in and have everything you wanted for a hundred dollars? A. No, sir; not abashed at that time. He was abashed because I said to him and stated the relation between Mr. Johnson and myself as coming through other people.

Q. You said nothing at your meeting which would disabuse Major Barrington's mind that you were willing to pay one hundred dollars for a legislator's vote, did you? A. I guess if the Major studied it closely he thought it a very queer conversation.

Q. Answer the question? A. I was not disabusing the Major's mind. I did not avow or disavow.

Q. You allowed Major Barrington to go away from your office with the idea that at eleven o'clock the following Saturday you would put up a hundred dollars? A. I think Major Barrington had that idea in his mind from Mr. Johnson.

Q. You had that idea yourself until you consulted your attorney? A. I did not.

Q. Were you afraid of Mr. Johnson? A. I am afraid of any man.

Q. You are? A. Yes, with those propositions.

Q. Would you run from them? A. Yes; they are dangerous men.

Q. Would you think, if they came around you, they would tempt you a little? A. I think they would besmirch me if I had anything to do with them.

Q. You were afraid of Mr. Johnson and tried to avoid him? A. I did.

Q. What was there wrong about Mr. Johnson's asking you to loan him one hundred dollars on an indorsed note? A. The proposition to me was not for any loan. It was a proposition to sell out on every proposition, so that he would be put in right and come out right—that his health was good.

Q. Were you surprised because he wanted to sell so cheap? A. I thought that a pretty good price for a man that wanted to do right.

Q. What votes have you in the Legislature? A. I didn't have any.

Q. You charge that Mr. Johnson came to you and said that he was willing to sell his vote to you for one hundred dollars? A. Yes.

Q. What votes have you to obtain in the Legislature? A. What votes?

Q. Yes. A. Well, just what he agreed to.

Q. What for? A. To sustain the Railroad Commission in every proposition; if I wanted to go in I could deliver them.

Q. Why did you enter into a long explanation, if it shocked your morals so much? Why did you enter into a long explanation about the Railroad Commissioners? A. For the simple reason that I knew I was right, and the facts would bear me out; and I was impressing on Mr. Johnson the proposition that if he did go away from me, and vote against the Railroad Commissioners because I didn't put up a hundred dollars—if he had any conscience, he would think himself an unmitigated scoundrel.

Q. If he had gone away, accepting the hundred dollars, would you have thought him a scoundrel? A. I would have a pretty good idea.

Q. Were you not a constitutional officer of the State? A. I was, sir.

Q. A judicial officer? A. I was, sir.

Q. You had taken an oath to support the laws and the Constitution of the State? A. I did, sir.

Q. How did you allow this imputation of Mr. Johnson's, or this offer of Mr. Johnson's, to remain without being announced from that time until this bill was introduced? A. I told my friends around. I believe my communication was not read until the day of the vote for the impeachment of the Commission.

Q. You remained silent on this charge until that time? A. Yes, I did.

Q. Why didn't you go to the District Attorney and report it to the Grand Jury? A. Because I did not know in the first place—I will explain my position to you. I have had a little experience in politics. I thought that if Mr. Leeds was using that kind of people to impeach me, that when the proper time came for my own protection, I would make the facts known, and I did.

MR. BLEDSOE: You thought that if Mr. Leeds was using that kind of material to impeach you—did you know as a matter of fact that Mr. Leeds had anything to do with Mr. Johnson in the matter? A. He was in the contract with him, as I understood. He signed his contract.

Q. What contract? A. The Traffic Association contract to stand by such legislation.

Q. Was that Traffic contract to impeach you? A. It was to impugn my official record.

Q. That is what you meant by what you just stated? A. Yes. I thought that the matter should be brought before the Legislature.

MR. BULLA: How do you know that contract was entered into? A. Well, he said so himself.

Q. Mr. Johnson said so? A. Yes, and then I had heard that he had stated so publicly.

MR. MCPHIE: This contract that you speak of is what is known as the Traffic Association contract, which was signed by a number of members as candidates for election? A. Yes.

Q. That is a pledge? A. Yes.

Q. That is not a contract between Mr. Leeds and these parties. A. That is what I have reference to.

Q. You simply referred to the Traffic Association pledge that was circulated over the State. A. Yes, a pledge.

MR. BULLA: If Mr. Johnson had not voted to impeach you would you have made a disclosure of this matter? A. I do not know what I would have done. I do not hardly think I would have made a charge against Mr. Johnson, no more than Mr. Robinson, and if it hadn't been for the fact that this matter came up before the Legislature as it did and in the shape it did.

MR. MCPHIE: Now you referred to a bill awhile ago that was introduced? A. No, sir.

Q. Wasn't there a bill introduced by Mr. Johnson in the Legislature of which this is a copy (showing)? A. Yes, I think so.

Q. That bill was introduced before the Legislature on the 17th day of January, 1893? A. I know he introduced this.

Q. You said in your direct examination that you thought Mr. Johnson was favorable to you until he introduced this bill? A. No, sir; I did not. I said that Mr. Johnson said, when he introduced that, there was nothing in the bill against the Railroad Commissioners. Mr. Leeds never made any proposition to me. Mr. Johnson said that he went on the proposition that everybody that was fighting was fighting for something, after I explained his position and inconsistency, and the injustice to the Commission by his position, or assumed position, that the Commission could not conscientiously take. He said that he knew there was nothing in Leeds' proposition.

Q. If you had avoided Mr. Johnson, and had gone out of the back entrance of the same building when you saw him coming in looking for

you, how did it happen that you met him with Major Barrington? A. Because he had met me through several sources. After seeing my attorney, I thought I could have people enough in that room to hear him, and understood so, but unfortunately did not have them there.

Q. You laid a trap for him? A. I told Mr. Richards to be there, and he said he would be there.

Q. You still held it after knowing he was willing to commit a deed of that kind; you were still willing to hold it without going before the Grand Jury? A. I guess so.

Q. Who is Mr. Richards? A. Mr. Richards is an attorney in San José.

Q. The attorney for Mr. Shively? A. Yes.

Q. And your attorney, too? A. In a great many things, yes.

Q. And has been for a good many years? A. Yes, off and on, he has been for a great many years. I consult him on matters around town, and in important matters always.

Q. When did you learn that Mr. Johnson and Major Barrington were coming to your office together? A. The day before.

Q. Did you fix the hour? A. I fixed the hour.

Q. And you had these gentlemen there to hear the conversation? A. I believe they could hear. I told Mr. Richards the conversation was going to take place—the interview—and for him to be there.

Q. Who did you tell, besides Mr. Richards, that that conversation would take place the next day? A. I do not know as I told anybody.

Q. You had the parties there to hear the conversation? A. I supposed he did; they were there.

Q. Why didn't you close the door and try to see if Mr. Richards could not hear the conversation? A. I do not know why I did not.

Q. You did not take that precaution. You laid a trap that you did not know exactly how to spring. Did Mr. Barrington tell you he was coming there and bring a promissory note? A. What the Major said to me didn't have much impression, only the appointment; but the Major, I think, said he wanted to borrow the money on a note.

Q. Why did you think so? A. I had determined in my heart that Mr. Johnson was looking for me day after day, and was reported to me, and wanted to see me, and it was reported around by other people outside that he was [not] very conscientious.

Q. He came right out with it? A. Yes.

MR. BLEDSOE: Do you know, of your own knowledge, that he talked to other people about that matter? A. No, sir; only what he told me and they reported to me.

Q. A great many people told you, then; were there any others besides Mr. Edwards, Archie Tisdall, and Major Barrington that he wanted to see you? A. No, sir; not on that; but that he was out for the money. But those people told me he wanted to see me. Mr. MacKenzie had several conversations.

MR. BLEDSOE: That he wanted to see you? A. Yes; that he wanted to meet me.

Q. Who is Mr. MacKenzie? A. He is a gauger.

Q. A United States Internal Revenue gauger? A. Yes.

Q. How long have you known him? A. A long time—a very close friend of mine.

Q. Interested in business in any way? A. No, sir; not at all.

Q. Did you procure for him the position of gauger? A. I used my influence.

Q. Did you go on his petition? A. Yes; and I think I went on his bond.

Q. As gauger? A. I do not know whether I am or not.

Q. Who is Mr. Tisdall? A. He is collector for the electric company.

Q. And you are a member of the corporation? A. I am. I am President and Business President.

Q. Except Major Barrington, with whom you say you have no business, has any one ever told you that Mr. Johnson wanted to see you, except some man who was under obligations to you, or with whom you were interested in business? A. Besides Major Barrington, Mr. MacKenzie and Mr. Bethell.

Q. They are all interested with you in business? A. The most of them all, yes.

Q. Did they know what Mr. Johnson wanted? A. Not until I told one of them. I told two of them, Mr. Edwards—

Q. When did you tell them? A. I was talking or doing some business with Mr. Edwards, when Mr. Tisdall came to the door and said a gentleman wanted to see me, and I said, "Tell him I am busy." He said, "Who is that fellow?" I said, "That is Assemblyman Johnson." He said, "What does he want of you?" I said, "He wants money."

Q. What date? A. Probably a week.

Q. You stated the first you ever heard of this matter was the 7th or 8th of December? A. I did not speak to him that day.

Q. Who was the first man that spoke to you and told you Johnson wanted money? A. MacKenzie.

Q. How long before the meeting with Edwards? A. Three weeks, anyhow.

Q. Who is Mr. Edwards? A. Secretary and Manager of the Electrical Improvement Company.

Q. He is one you made a statement to? A. Yes, and also made a statement to Mr. Bethell.

Q. Mr. Bethell? A. Yes, he is Secretary of the company.

Q. Of the electric company? A. Yes.

Q. What other business are you dealing or associated with Mr. Bethell in? A. That is all.

Q. With Mr. Bethell? A. Yes, that is all.

Q. Mr. Edwards? A. That is all. With Mr. MacKenzie I am not associated in business.

Q. Ever been? A. No, sir.

Q. Is he under any obligations to you? A. No, sir; I think I am to him.

Q. Political obligations? A. Yes.

Q. Have you ever paid him any money for political work? A. No, sir. His brother you mean? Yes, I have John MacKenzie.

Q. You say you have never paid John MacKenzie any money for political work? A. I gave him money, yes, to work on; but not for his services, I never did.

Q. How do you know what he did with it? A. Well, I have had a great deal of confidence in him. He is a member of the Republican County Committee, and a very active Republican.

Q. Do you know that he used all the money that you gave him? A. No, sir.

Q. You expected that he would keep some of it? A. I do not think he would.

Q. Did you never keep any money for doing any political work? A. I never had any money for political work.

[The Chairman ordered the last question and answer stricken out.]

Q. When Mr. Johnson and Mr. Barrington came into your office, what was the first thing that was said by Mr. Barrington? A. As near as I can remember, "Mr. Rea, this is Mr. Johnson, Assemblyman-elect," naming the district, forty-five.

Q. What else? A. "Mr. Johnson wants to borrow one hundred dollars, and he is willing to sign a paper, or contract, or something, and he is friendly to the Commission, and he has a note, and here is his signature—he has a note which I drew up myself, made payable to bearer, and Slagts indorsed it," and so forth.

Q. What else did he say? A. I asked them to be seated.

Q. I am speaking of Barrington now? A. I asked them to be seated, as my recollection goes, and the Major got up in his talkative way, you know, and commenced to explain about the solvency of the indorser upon that note, when I conveyed to his mind the idea that he was on the wrong track, that he did not understand—that he didn't understand it—if he did I was on to him, and the Major just collapsed, to tell you the truth.

Q. When he recovered from the collapse what did he do? A. He took me out and apologized to me for bringing Mr. Johnson in there; and I was to understand he was on no such proposition.

Q. And you left Mr. Johnson in the room when you went out to speak to Mr. Barrington? A. I did; yes.

Q. You took Mr. Barrington out? A. No, sir; he took me out.

Q. Then you did something to disabuse his mind about giving the hundred dollars? A. No, sir.

Q. His mind was disabused of the fact? A. No, sir. Mine was that he was not in with Johnson.

Q. Then you knew that his mind was disabused of the fact, that he was willing to take the hundred dollars; his mind was disabused of the fact, then, before Mr. Johnson left your office that you would not pay Mr. Johnson one hundred dollars for his vote? A. Nothing said about that. You know that is a small room, the office, and here is a door, and this is our machinery and supply room. And the Major said, "Mr. Rea—" I said, "I will meet you next Saturday at eleven o'clock, at this office." He said, "Mr. Rea, before you go out I would like to see you a moment." He opened the door and we left Mr. Johnson; he excused himself to Mr. Johnson, and he went out into that room, and wanted to apologize, and Mr. Edwards was standing at the door as I went out, and he then proceeded to apologize for everything Mr. Johnson wanted—I forget exactly his language—and that he didn't know that he was going to run into that kind of a fix, and apologized.

Q. And he told you that he wanted to apologize, and that when Mr. Johnson came into your room that he did not know that Mr. Johnson was coming for any such purpose? A. Yes. That he came there to borrow money on a note. Then he was surprised as to the way the conversation was going.

Q. Did he seem to be surprised? A. Yes.

Q. He did make you believe that he had been misled in coming there? A. Yes, his actions would indicate that.

Q. And that was after he stated to you in his language and before Mr. Johnson had opened his lips, "I have brought Mr. Johnson up, and he has a promissory note, and would like a loan of a hundred dollars, and he will vote for you in the Legislature." A. Strange as it may seem, he did.

Q. Why did you ask him if he would vote for a Republican United States Senator? A. Well, I had this object in view: I wanted to see what kind of a man he was. If he told me: "Yes, I can vote them all," I was just simply not to put any credence in the matter at all, and wanted to see about where he stood, and to see where he would work, and his method of reaching out, and his actions, and the connection and the connections he had, and it was a hard game to leave his party.

Q. Give us his game? A. That he would vote for a United States Senator.

Q. That he would? A. Yes, including himself. He was the man I was talking to.

Q. That was the 7th or 8th of December? A. Yes; or the week before that.

Q. Did you know at that time positively what the complexion of the Legislature would be? A. Mr. Johnson said he knew. I hadn't looked into it.

Q. You did not know then? A. But he did. Since you call my attention, he said in the room there—

Q. You did not know what the complexion of the Legislature was when you said to him, "Who would you vote for for United States Senator?" A. Only since the conversation came up.

Q. You said a moment ago that when Mr. Barrington came in with Mr. Johnson he said, "Mr. Rea, let me introduce you to Assemblyman Johnson; he wants to borrow one hundred dollars on his promissory note, and if you let him have the money he will vote for you and the next Legislature?" A. That's right—the sense is true.

Q. The reply you made is, "Well, sit down; who will you vote for for United States Senator?" Q. No, sir; that was not it.

Q. What was the next word? A. I could not tell you exactly, but there was a conversation and I believe some one spoke about his contest; hard fight, or something like that, and in repeating my conversation over I think I left that out. I think that this came in later on. The Major got up again and explained the indorser, his ability as to his solvency; that is, the insolvency of the indorser. And I said, "Mr. Johnson and I understand each other. The cold-blooded fact is, he wants one hundred dollars before coming to the United States Senator proposition," and I made the remark during the conversation that Mr. White will be elected, anyway; and he remarked to me, "Well, it is not a very sure thing that it is a Democratic Legislature, for it lacked one or two, I think, for a majority."

Q. But you did not know anything about the complexion of the Legislature? A. I did not know; I hadn't looked at the complexion of it.

Q. You did not know but that Republicans might elect a United States Senator without Mr. Johnson? A. It was settled they were out of the fight in my mind. In fact, I was not in that fight.

MR. BLEDSOE: Who was your choice for United States Senator? A. My choice for United States Senator was Mr. M. H. De Young, although I was not making his fight, or anything like that.

Q. You probably would be as well satisfied with any equally as good Republican? A. Yes; I would be satisfied with any.

MR. MCPRIKE: When did you first have a conversation with Mr. Barrington, if you ever had any, about this matter, after Mr. Barrington apologized to you for bringing him up and offering his vote? A. It was the day after or the morning that that document was published. I mean the letter to the Legislature.

Q. It was either that day or the day after? A. Yes.

Q. And what was your object in going to see Mr. Barrington at that time? A. He was coming along the street and I said "Major," I said, "do you remember the conversation between Mr. Johnson and myself the day you were in there?" He said, "Yes." "Well," said I, "I sent a communication to the Legislature and they might take it up, and you had better refresh your mind on that."

Q. Did you talk the matter over with him then? A. No, sir; I had that much of a talk with him; that is all.

Q. You said that he had better refresh his mind? A. That is what I said.

Q. Why refresh his mind? A. Well, it had been some weeks afterwards and I wanted him to brighten up on it.

Q. Is that the only time you have seen him since? A. No, sir.

Q. Since that conversation with him? A. I have talked with him.

Q. About this matter? A. Yes.

Q. And has he been down to the bank with you, to the Commercial Bank? A. No, sir.

Q. Has he examined that card with you? A. No, sir; he has never seen it; I don't think he has.

Q. Have you conversed with him about this matter, exchanging views about it? A. Yes, I talked with him.

Q. And asked him if he remembered what took place in your office? A. Yes, I have.

Q. And asked him to state it to you? A. He stated part of it?

Q. What did he state when he made that statement to you? A. He agrees with me on most of the things.

Q. On most of them? A. All, pretty near.

Q. On what ones does he disagree? A. I do not know as he disagrees on any.

Q. On all he agrees with you? A. On the conversation I guess we agree, yes.

Q. You say that yourself, Major Barrington, and Mr. Johnson were the only persons present in that room? A. Mr. Edwards passed through the room.

Q. When did he pass through? A. Just as I was seating the Major—about that time.

Q. What was the Major saying to you? A. He was telling me about the note, and I told him I did not care anything about the note. I was a little out of patience when I spoke to the Major.

Q. Whose handwriting was on that card—do you know? A. Mr. Johnson's.

Q. Did you ever see Mr. Johnson write? A. There is not any writing on it at all, there is just marks.

Q. I understood Mr. Johnson wrote the names of certain Senators? A. No, sir; that is an Assembly card, with certain marks on it. I asked him to write them, and the districts. He said he did not remember the districts, but he had a card, which he called for, from the Major.

Q. After Major Barrington had stated to you that Mr. Johnson was willing to sign a contract that he was willing to vote for you as Railroad Commissioner, or on any proposition that might come before the Legislature? A. He did not say that. He said he was willing to stand by the Commissioners.

Q. And that he was willing to put that in writing? A. Yes.

Q. And Major Barrington told you that? A. That was the introduction.

Q. And he was willing to put it in writing? A. Yes.

Q. To stand by the Commission? You understood that the Commission would be investigated by the Legislature, and he was willing to stand by the Commission? A. That he would vote in the Legislature to sustain the Commission. The proposition was then not the impeachment of the Commission, although Mr. Leeds had told me, but the idea then was to abolish it.

Q. And the Major made a statement that he was willing to put it in writing? A. Sign a paper, I think he said.

Q. To that effect? A. To that effect.

Q. Why didn't you get the paper ready for him if you wanted to catch him? A. It would cost me a hundred dollars, and then I would have been in it, I guess.

Q. Is that the reason why? A. Yes, guilty.

Q. Did you find that out before you consulted your attorney, or afterwards, that you would have been guilty if you had? A. I do not know whether he said I would be guilty or not. He said I had better drop him; that there was evidence enough now to convict him.

Q. Convict him of what? A. To be bribed.

Q. But you haven't sought to have him convicted of that? A. I never have, and never expect to.

Q. Why were you so much in doubt as to a matter of that kind that you had to go to an attorney to act? A. I always do in that kind of matters.

Q. Was it such a complicated question? A. That is dangerous grounds, and better to have advice.

Q. You told Mr. Johnson that you had told Mr. Leeds, did you, that if Mr. Leeds would take your view of the railroad matter that he could disembowel the company? A. Yes; I think I used those very words, that he could disembowel the railroad company, or could bring out every bit of evidence, as far as the evidence was concerned; put them at his mercy. I told him I told Mr. Leeds that.

Q. You did not examine the note? A. No, sir; I never looked at it particularly.

Q. You said Mr. Johnson seemed very nervous, and crossed his legs very often; was that when you were relating your position on the Railroad Commission? A. No, sir; that was when we came down to the proposition.

Q. Did he seem to be nervous because he didn't seem to think you

would let him have the money, or because he was making such a bold jump at you? A. I think that he was nervous that he had put it too high, and I would not stand it, and he didn't want to make a bad one.

Q. Who did you hand the note to? A. To Mr. Johnson himself.

Q. What did he say? A. He took it and laughed.

Q. Anything else? A. As soon as I got through and said we understood each other; that he wanted a hundred dollars.

MR. BULLA: Did he say that or did you? A. He said, yes. I said it, but he said yes, assenting.

Q. Assenting to you? A. Yes.

Q. He did not make the statement, but he assented to yours? A. I made the statement, and he assented.

MR. MCPIKE: And after making an appointment you failed to keep the appointment for the next Saturday? A. Yes.

MR. BLEDSOE: Why did you fail to keep that appointment? A. Because I intended to drop Mr. Johnson.

MR. MCPIKE: Could you not have kept that appointment and told Mr. Johnson you were not that kind of a man? A. That would not have done any good.

Q. He was after it anyhow? A. He evidently was, or he wouldn't be coming after me the way he did.

MR. BLEDSOE: You could have got your witnesses there and caught Mr. Johnson the second time, and have your witnesses overhear the second proposition? A. Yes. I think Mr. Johnson would have taken a check and gone and cashed it. He didn't seem to have any hesitancy at all.

Q. Didn't you consult with your attorney about keeping the second appointment. A. Yes, and he advised me to quit.

Q. Who was that—Mr. Richards? A. Yes. I said to Mr. Richards: "You write out a contract for Mr. Johnson, and I will cinch him this time;" and he wrote out this contract. It was right after the meeting in the office. Then he wrote out the contract for him to sign for the next Saturday; and then he came to me afterwards and said: "You had better drop the whole matter." I wanted to go on with it.

MR. MCPIKE: Didn't he say, "Mr. Rea, you had better drop it, because that fellow would vote for you when he goes to the Legislature?" A. No, sir.

Q. You were very cautious and particular not to make any attack on Mr. Johnson? A. That letter was written after the vote.

Q. It was after you knew he had introduced a bill that was really antagonistic to you? A. Yes.

Q. You knew when he introduced the bill—Assembly Bill No. 341—that Mr. Johnson was inimical to you? A. Cutting my salary down to one hundred dollars.

Q. Yes? A. Yes.

MR. BLEDSOE: Is that the bill you referred to in your interview with the San Francisco "Chronicle?" A. Yes.

MR. MCPIKE: Did your attorney, Mr. Richards, know before you were to meet Mr. Johnson in the office on the 7th or 8th of December that he was coming there to make a proposition to you of this character? A. He did.

Q. And he went there as a witness? A. He went there; we had business in there. I said he will be in the office at eleven o'clock, and he

said "I will be in the office." Mr. Richards wasn't three feet from Mr. Johnson.

Q. And he was trying to hear? A. I do not know; he said he could not hear anything.

Q. You spoke up quite loud? A. Yes, and strong.

Q. If that was the case, and he knew what Mr. Johnson was coming there for, and saw him come, and heard these conversations, or could have heard them, why did you go to him and consult him about this matter as to whether or not it was a proper thing for you to let him have a hundred dollars? A. The proposition with me was I didn't want any man; he had already told Mr. MacKenzie and others he had signed contracts; Major Barrington had stated it, and I asked Mr. Johnson if he would, and he said he wouldn't like to, but indicated he would if I would insist on it, and I would have my own admission that I knew he would, and therefore I intended to clinch it.

Q. How does it happen that your attorney, when you told him first that Mr. Johnson was coming there for a legal purpose, and he was coming there, and he was to post himself so he could hear, and you spoke in a loud voice, how is it he did not tell you there and then that this was an illegal matter? A. He told me not to compromise myself on any direct proposition.

Q. On any indirect proposition you might have permission? A. That I might go on and see what Mr. Johnson's hand was.

Q. That was Mr. Richards' idea in putting up the job? A. I do not know. My idea was that he was to have a number of people in there, and it seems as though he did not. There is quite a thick wall between the two offices.

Q. You said that you believed that Mr. Johnson, if you had given him a check, would have gone to the bank and cashed it? A. Yes.

Q. He would have done it perfectly innocently? A. He would have done it very eagerly, there is no doubt about it.

Q. Was there anything in his actions inconsistent with his innocence? If he had gone there to borrow money, and presented that promissory note and presented it to the bank, was there anything wrong about that? [Question withdrawn.]

MR. BLEDSOE: Was there any door between the front and back offices? A. Yes.

MR. CLUNIE: Mr. Rea, will you look at that letter? Is that your signature? A. Yes.

Q. Who wrote that letter? A. I did.

Q. Who composed it? A. My own composition; every idea is my own with a few corrections made by Mr. Richards.

Q. That letter was drawn up by Mr. Richards and yourself? A. Yes; but every idea was my own.

Q. Nobody else was consulted about that? A. No, sir; no other living person.

Q. You sent it from where? A. It was sent from San José.

Q. In this letter you speak of the Board of Railroad Commissioners; was this letter sent by you on behalf of the Board? A. No, sir; I intended to take that letter before the Board previous to the writing of that letter. Mr. Beckman and I had addressed a letter to the Speaker, Mr. Gould, for the purpose of having the Legislature write, and we received no reply and the warfare went on and all of these incidents

came up, and knowing the inside of the fight as I did I intended to see if my actions were indorsed, but Mr. Leeds came to Sacramento for the purpose of watching the contest. The Commission was adjourned, and I did not go to see any of them, but I sent it in myself.

Q. This letter was written at San José. A. Yes.

Q. By Mr. Richards? A. Every idea of that is mine.

Q. Where was it written? A. It was written in San José by the typewriter there.

Q. It was written by the typewriter? A. And sent by me from San José to Sacramento.

Q. You had previously written a letter which you intended to submit to the Board of Commissioners? A. Yes.

Q. Where was that letter written? A. San José.

Q. By yourself and Mr. Richards. A. Yes.

Q. And taken back to San José, and the whole writing was done in San José? A. Yes.

Q. You notice the letter is dated San Francisco? A. Yes; that happened because I intended to introduce it in the Railroad Commission in San Francisco.

Q. Perhaps I misunderstood you; you first wrote on the first letter you had written you had intended— A. For the Board.

Q. The first letter you had written was intended for the Board? A. Yes.

Q. And you thought it necessary to send it to the Board at once? A. Yes.

Q. And you took it to San José? A. Yes, and gave it to Mr. Richards for his typewriter, and the heading was not changed; and, in order to reach this place in time, had to have it hurried up, in order to get it before the Legislature before the vote was taken. I thought it would come up by the first train, and therefore I didn't take the pains to have it rewritten, but just changed it here and there.

Q. And this is part of the original letter? A. This is the letter; instead of "the Board," I have changed it to "I," and so forth.

Q. What is your business at San José? A. Well, I am in the horse business.

Q. What part of the horse business are you interested in? A. I own some very fine horses, of which I am very proud—race horses.

Q. And what else? A. In the berry business, have a farm, and I am in the real estate business; that is, I deal in real estate more or less, trading generally. I am in the electric light business; that is about all, and Railroad Commissioner.

Q. How long have you been engaged in these different lines? A. Ever since I have been sixteen years of age; that is, I own horses, and in that line ever since I was sixteen years old.

Q. And you have been in the electric light business since you were sixteen years old? A. No, sir; I have been in that business directly for three years; it hasn't been very long; it is two or three years.

Q. You have been Railroad Commissioner how long? A. Six years.

Q. You have been in the real estate business how long? A. I was in the real estate business in the firm known as Montgomery & Rea actively for several years—for four or five years.

Q. Four or five years altogether? A. Yes.

Q. From what time? A. From about 1884 or 1885 until a couple of years ago.

Q. You have retired from real estate? A. I did myself, and my partner both.

Q. Then you are not in the real estate business? A. I deal in real estate. I trade in real estate, not as an agent.

Q. Then your real business is Railroad Commissioner, as you have stated, and also as a stockholder in the electric light company? A. Yes, and active President; do all the business for them.

Q. You have lived in San José how long? A. I have lived in San José since 1879.

MR. BULLA: Do you give your personal attention to these various kinds of business? A. I do, yes.

MR. CLUNIE: You are in San José how much of the time? A. When I am not on the Railroad Commission business; all the time pretty near.

Q. How much of the time are you in San José—how much of the time do you spend there? A. It depends. Generally Fridays in the day time, and Saturday morning I am most always in San José.

Q. And other times you are away? A. I am either at the ranch or at the city.

Q. How much of the time do you stay at the ranch? A. I am out there three or four times a week when at home.

Q. And those visits last how long? A. All day.

Q. And then two or three days of the week you are at the ranch, and stay all day, and Fridays and Saturdays in San José attending to your business. A. Yes. Saturday afternoon I most generally go to the ranch.

Q. You have an office at San José? A. I have two offices at San José; one is the real estate office. I still have my desk and do my business there, and the Electric Improvement business, I do it in the Electric Improvement office.

Q. This conversation with Mr. Johnson was in the private office? A. Yes, in the Directors' office of the Electric Improvement Company.

Q. On what day was that? A. Either Wednesday or Thursday.

Q. Cannot you recollect? A. No, sir; I have tried, and my judgment is that it was Wednesday, but it might have been Thursday.

Q. Was that a matter that would impress itself upon your mind to a considerable extent? A. No, sir; not as to days and dates.

Q. It did not make such an impression on your mind? A. No, sir.

Q. In what time of the day did this occur? A. It occurred at eleven o'clock. We started in at eleven o'clock; had the appointment for eleven.

Q. Had you been in the habit of loaning money to people? A. No, sir.

Q. Had you made loans before? A. Yes, I had made loans.

Q. At San José? A. Yes.

Q. Is it an uncommon occurrence for you to loan money there? A. No, sir; I loan money.

Q. Is it not an uncommon occurrence for you to loan money? A. No, sir.

Q. At San José it is generally understood, is it not, that you do loan money? A. No, I do not loan money in the sense of loaning money. I may make a trade and take a mortgage, but I do not loan money.

Q. Do you swear that you do not loan money, and do loan money as a business—as an accommodation? A. Yes, I have as an accommodation.

Q. You have made a good many loans as accommodation? A. Yes.

Q. Have you ever acted for any persons making any loans? A. No, sir.

Q. Have you ever acted as disbursing agent for any person in San José? A. No, sir.

Q. Have you ever disbursed any money except your own? A. That is a very broad question. In the real estate business we loan lots of people money.

Q. I asked you, outside of the real estate business, have you ever disbursed any money in San José? A. State how.

Q. Loan it out for other persons, or for any person in the State that wanted their money to go in different channels? A. I am not a philanthropist. I loan money for other people in real estate.

Q. Who do you loan for when in the real estate business? A. Well, it would be hard to tell you without going to the books.

Q. You could not state? A. No, sir.

Q. You haven't a very good recollection? A. Pretty good, in some things.

Q. Cannot you tell us any person to whom you have loaned money? A. I can tell you; yes.

Q. Tell us who they are. A. That comes under my private business, and perhaps there are persons in here that I have loaned money to, and I don't think it is proper to state. If you want to go through the books of Montgomery & Rea, you can.

Q. I want to know if you are not a disbursing agent for different people? A. Name them.

Q. I cannot name the people. A. I am not disbursing agent for any people.

Q. As any other kind of an agent? A. Yes; real estate agent.

Q. As real estate agent it becomes necessary for you to disburse money for other people? A. To loan money; yes.

Q. Tell us the people. A. For Montgomery & Rea.

Q. You cannot give the names? A. I can; but that is my private business, and I do not think I ought to state to whom I loan money.

Q. There is nothing improper about it? A. No, sir.

Q. It is a matter of record? A. Yes.

Q. You have not made any loans in the business of Montgomery & Rea but what the records will show it in San José? A. Yes.

Q. Any other loans that you have made to any person, or any disbursing that you have made, the records of Santa Clara County will show; have you made any other disbursements for any other person?

[Mr. Clunie here stated that he expected to prove the witness was in the habit of loaning money and disbursing money in political times, and of disbursing money for the Southern Pacific Company, and so forth.]

[The Chairman held that the matter was not material, and ordered the investigation to proceed.]

MR. CLUNIE: Now, Mr. Rea, I will ask you if you have not at San José, Santa Clara County, acted as disbursing agent for various

persons for the disbursment of moneys otherwise than for the purchase and sale of real estate? [Objected to.] A. I have not; no, sir.

Q. Mr. Rea, have you ever received any money from the Southern Pacific Railroad Company for the purpose of disbursing it for any purpose? A. I have not.

Q. Have you ever received any money from the officers of the Southern Pacific Railroad Company, or any person occupying any position in the Southern Pacific Railroad Company, for the purpose of paying it over to any other person? A. I have not.

Q. Do you know Mr. W. W. Stow? A. I do.

Q. Did you ever receive any money from Mr. W. W. Stow for the purpose of paying the same over to any person in San José, Santa Clara County? A. I have not.

Q. You are the same person that commenced a libel suit at Santa Clara County? A. I am.

Q. What was the verdict in that case? A. The jury was with me, but the Judge was not. The jury was in for heavy damages, but the Judge nonsuited me, but it is now in the Supreme Court.

Q. You were a witness in that case, were you? A. I was. For your information I will state further that I have been a Railroad Commissioner for six years, and the railroad company never saw one decision that I rendered until after they saw it in print, and that every decision has been against them, with the exception of one, and that was a compromise in the case of Robinson, and Mr. Abbott of Sacramento will corroborate me.

Q. Do you know a man by the name of McCusick? A. I do not know him. I have heard of him, but I do not know him. I know that he was a lawyer for the company, or some such name as that, and I may have met him, but I never had any business with Mr. McCusick.

Q. Did you ever have any conversation with Mr. McCusick? A. I never did that I know of.

Q. Do you know Senator Bailey of Santa Clara? A. I know him well.

Q. Did you ever have any conversation with Mr. McCusick in reference to Senator Bailey? A. I never did.

Q. Did you ever send any word to Senator Bailey by Mr. McCusick? A. I never did.

Q. Did you ever deliver any money from Senator Bailey to Mr. McCusick? A. I never did.

Q. Did you ever deliver any money to Senator Bailey? A. Yes; I did; it was my own money.

Q. Tell us what that was for? A. It was for the purpose of getting him in shape so he could make the campaign. As I was a candidate on the Republican ticket with Senator Bailey, he wanted me to loan the money to him, which I did, or to give it to him as a contribution to him for the consideration of which he would espouse my cause in the campaign.

Q. Now go on and tell us what you did? A. That is all.

Q. From whom did you get that money? A. Out of my funds.

Q. Did you receive any money from W. W. Stow? A. I did not.

Q. Did you ever, at any time, receive any money from him? A. I did not.

Q. When you were a candidate for Railroad Commissioner, is it not a fact that you got some money from W. W. Stow? A. I did not.

Q. Is it a fact that you got any money from any official of the railroad? A. I did not.

Q. Is it not a fact that you received \$1,000 to give to Mr. Bailey, and you gave him \$350, and kept \$650? A. That is not a fact.

Q. Did anything of that kind occur? A. No, sir.

Q. No one ever at any time gave you money to give Mr. Bailey? A. No, sir; never.

Q. You say you did hand him \$350 to advocate your cause? A. Mr. Bailey was the Republican candidate for State Senator. I was the Republican candidate for Railroad Commissioner. We were both upon the same ticket in a common cause. Mr. Bailey came to me for the money. I let him have it. I was not going to be in the county to make my fight and my contest, as I was going to be absent.]

Q. And you gave him \$350? A. I did.

Q. Who else did you give any money to at that time? A. I think that I gave money to a number of people in that contest.

Q. Don't you know? A. Yes, I know.

Q. Tell us who they were? A. Is it necessary that I should state? If you want to know, gentlemen, it is an open book.

[Objected to, and objection sustained.]

Q. Now tell us who else you gave it to.

[Objection sustained.]

Q. You are connected with what political organization? A. What political organization?

Q. Yes. A. Well, I am a Republican.

Q. Are you a member of any committee? A. No, sir.

Q. Were you on any Republican committee or on any committee at the time you made this disbursement to Senator Bailey at San José? A. I was a candidate on the Republican ticket.

Q. I did not ask you that; I ask you if you were a member of a committee? A. No, sir.

Q. Were you a member of any committee at the last election? A. No, sir; I was not.

Q. How long has it been since you were a member of the Republican committee at San José? A. Not since I was a candidate; not for six years.

Q. During no time during the term of six years have you been a member of any political committee? A. No, sir.

Q. Did you act at any election since you have been any candidate as a disbursing agent for the disbursing of any money in San José? A. You mean in conjunction with the committee?

Q. I mean just what my question says? A. Four years ago—no, six years ago—two years ago when I was a candidate I assisted the county committee, yes.

Q. How did you assist them? A. I assisted them financially.

Q. I am asking you about disbursing the money? A. I supplied the deficiency the county committee needed.

Q. Did I understand you to say that when Mr. Johnson and your friend Major Barrington—in regard to your relationship with Major Barrington, have you ever loaned or advanced him any money? A. I would not say that I had not, because he is a newspaper man and runs

a little paper, and they come around for contributions, and there is not a paper in San José, directly or indirectly, that I have not assisted. But since the Major has had the "Democrat"—since he ceased to be the city editor of the "Better Times" and the "Phoenix"—it seems to me he got five or ten dollars one day from me, and he paid it back.

Q. But outside of that? A. But outside of that I cannot think that the Major ever got a dollar from me.

[Mr. Rea was here temporarily withdrawn from the witness stand with consent of counsel.]

J. T. McGEOGHEGAN.

Called and sworn, testified as follows:

MR. SHORTRIDGE: Where do you reside? A. San José.

Q. And what is your business? A. Cashier of the Commercial Savings Bank, San José.

Q. And you came here in response to a subpoena upon you? A. Yes.

Q. Issued by the Speaker of the House, or the Chairman of this committee? A. Yes.

Q. You were ordered to bring certain papers with you? A. Yes.

Q. Have you those papers here? A. I have them, yes.

Q. Do you know James W. Rea? A. Yes.

Q. From whom did you get the papers that you hold in your hand? A. Mr. Rea.

Q. On what occasion? A. The date is on the document.

Q. January 28th? A. January 28th.

Q. [Reads:] "Deposited with me January 28, 1893, 2:35 o'clock. J. T. McGeoghegan." Is that your writing and your signature? A. Yes.

Q. What does it contain? A. I saw the document put in there.

Q. Since it was placed there this has remained in your possession? A. Yes.

Q. Continuously? A. Continuously, yes.

Q. Has any one else seen it at all. A. No. The place where I put it in my keeping—in my possession—it was locked in the vault of the bank.

Q. Please open the envelope? A. It has not been opened in any way. My signature is across the seal of the envelope, and it has not been opened.

[The Chairman here opened the envelope.]

Q. That is the envelope that was given to you? A. Yes; just as it was given to me.

Q. You saw the contents of that? A. No, sir.

Q. Given to you just in that form, was it? A. Yes.

Q. Do you know whose writing that is? A. Yes; that is Mr. Rea's writing. He addressed that to me and asked me to put it in an envelope and retain it until called for.

Q. You have never seen the contents? A. I saw what was put in there.

Q. Have you seen the card that was put in there. A. It seems to me it was a small book, or list of names, or something like that; further than that I do not know anything about it.

MR. SHORTRIDGE: We formally offer this large envelope and also this small one.

[No objection.]

[The papers referred to were given to the Secretary of this Committee.]

Q. You know what this purports to be, this letter? A. No.

Q. Did you see its contents? A. No.

Q. Is that the card that was placed with you? A. Yes; I know that it is from its being the style and in the manner that it is, that is the only way.

MR. SHORTRIDGE: I have not offered the letter yet. We offer this card, the first page of which contains the words, "Thirtieth session of the Legislature 1893. Compliments of Thomas ———, candidate for Sergt-at-Arms, subject to Democratic suffrages."

Cross-Examination.

MR. CLUNIE: You do not know anything about this matter except that Mr. Rea presented that to you and asked you to preserve it? A. Yes, for safe-keeping.

Q. Mr. Rea is a customer of your bank? A. Yes.

Q. Is he in the habit of depositing papers [like] that and asking you to take care of them? A. Yes.

Q. That is a matter of frequency with Mr. Rea? A. Yes.

Q. He has frequently done this? A. No, sir, not like this. Mr. Rea deposits papers with our bank and keeps his papers and documents there—Commercial Savings Bank, San José. On the 28th of January that was deposited with us.

Q. At what time? A. 2:35.

Q. Why were you so particular? A. Because I was requested to do so.

Q. He seemed to be very particular about the time and indorsement? A. Yes.

MR. MCPIKE: You are the Cashier of that bank there? A. Yes.

Q. You came here only to testify about this matter? A. That is all, sir.

Q. Do you know Mr. Johnson? A. Know him when I see him.

Q. Ever have any business with him? A. No, sir.

Q. Did he ever have any business with your bank? A. I think so, yes.

Q. Recently? A. I do not know how recently.

Q. In the month of December? A. Yes.

JAMES W. REA.

Recalled.

MR. SHORTRIDGE: This is the card you testified to in direct examination? A. Yes.

MR. MCPIKE: We will admit that.

MR. SHORTRIDGE: You will admit that this is the card marked by Mr. Johnson?

MR. MCPIKE: No, sir. We admit that this is the card Mr. Rea testified about. A. That is the card.

MR. SHORTRIDGE: Those marks that you see on there were made by Mr. Johnson? A. They were.

Q. What names are they? By the way, which is marked twice?

MR. MCPRIKE: I submit that the card is the best evidence. The card is offered in evidence and speaks for itself.

MR. BLEDSOE: I want Mr. Rea to testify whether or not Mr. Johnson made every mark on that card. A. Yes, Mr. Johnson made every mark.

Q. What did one mark relate to? A. One mark related to people who were out for money on every proposition except United States Senator.

Q. What did two marks relate to? A. Out for money for every proposition, even to the United States Senator.

MR. BLEDSOE: I would like to know which mark that is opposite to, the second one. I want to know if the witness knows? A. It was meant for H. H. Johnson; his own name.

Q. How do you know? A. Because he made the remark when he had it in his hand. I had the card when he handed it to me. After he handed it to me I saw two "Johnsons," one above the other. I said: Is your name D. J. or H. H. Johnson?" He said: "H. H. Johnson," and I turned to look at the names and I couldn't find the others, and I simply handed my pencil to him and he asked me if he should mark his own, and I said "Yes."

Q. Were those names made with your pencil? A. The one mark was made with my pencil and the two marks with Major Barrington's.

Q. The one mark was made with your pencil and the other marks were made with Major Barrington's? A. Yes.

Q. Didn't you testify on your direct examination that he borrowed Major Barrington's pencil and marked with that pencil and then handed it back to Mr. Barrington? A. Yes, that first name. That was on the proposition whom he knew he could get for United States Republican Senator if it was paid for.

Q. What kind of a pencil did you have? A. I have the identical pencil that I had and I think the same lead is in it now.

MR. BLEDSOE: Is it indelible? A. It is an indelible pencil that I carry in my pocket all the time.

MR. MCPRIKE: Are you sure that it is the same pencil? A. I know that is the pencil.

Q. And the same lead? A. The lead might have been worn off a little, but I think it is the same lead. I have not changed the lead since. Unless another lead was in the pencil it would be the same. I think it is the same.

Q. You did not deposit that card until the 28th of December? A. No, sir.

Q. That was twenty days at least after it was handed to you? A. Yes.

Q. Did you carry this pencil and the same card in your pocket all the time? A. I did not; no, sir.

Q. Where did you have the card? A. To tell the truth, I intended to give the card to a certain party for the purpose of identification.

Q. Who was the party? A. Well, a friend of mine.

Q. Who? A. I intended to give it to Mr. Kelly, of the Railroad Commission, my Private Secretary. When I go to the city every morning I change my clothes, and I left that card on the bureau. I forgot to put

it in my pocket, and the girl that cleans up the room put it where my papers are generally, and it was mislaid. I had with that card the contract that Mr. Richards wrote out for Mr. Johnson to sign, and I misplaced it, and I thought I had lost that card. I was positive that I gave it to Mr. Kelly, and he said I did not.

Q. And you didn't find it until when? A. I didn't find it until the night before the 28th, and Mr. Gould, Speaker of the Assembly, had been down to have an interview.

Q. Interview with you? A. With the "Herald." After his interview with the "Herald," I saw he was so opposed to me from the interview that I thought I had better deposit that card, and therefore I looked for it.

Q. Is this card now in the same condition as it was on the day Mr. Johnson was in your office? A. Yes.

Q. Do you swear now before this committee that you saw Mr. Johnson make each one of those marks on that card? A. Yes, I saw Mr. Johnson make each and every one of those marks.

MR. MCPRIKE: Did Mr. Johnson, after marking that card, exhibit it to Mr. Barrington? A. He did not.

Q. Mr. Barrington never saw the card? A. I do not think Major Barrington saw the names marked, because I think he was on the lounge.

Q. Do you know whether he did positively? A. He was there in the room; I do not know whether he did or not.

Q. He was not curious about it to find out? A. No, sir; he did not take any part in the conversation after the time I told you.

Q. He did not seem to care about anything that was going on between you and Johnson? A. No, sir.

Q. He could hear? A. Yes, he could.

Q. He did not look at the card? A. He never had the card in his hand.

Q. Did Mr. Barrington take this card out of his pocket? A. Yes. It was a card Mr. Johnson gave to him in the morning, but Mr. Johnson asked him—

MR. MCPRIKE: You do not know that Mr. Barrington ever saw a mark on that card? A. I think he did; he was in the room, and I suppose he did.

Q. How could he see these marks unless he had it in his hand? A. Mr. Barrington was not farther than where you are from Johnson. Mr. Johnson sat in a chair, and from where the Major was in his chair he could not help it; but there was a part of the time he was on the lounge at this time, and I think he was on the lounge at this time, but if he looked he could. I couldn't swear whether he was looking.

Q. Have you talked with him about that card since? A. Yes.

Q. Didn't he tell you? A. He told me he knew he marked the names on the card.

Q. Didn't you read the names off? A. Mr. Johnson mentioned all the names, and other names besides. He didn't mark all the names he mentioned.

Q. Who were the others? A. I do not know. I even forget the names on that card, with the exception of Hurley. I did not know a name until the 28th.

Q. What made you recollect Mr. Hurley? A. Because there was a Republican United States Senator, and some way or other he was the one I remember.

Q. You were interested in the election? A. No, sir; it was because the others were marked together and this was alone, and that impressed me. It was the only mark alone, and when he marked the other names I just simply looked over them and put it in my pocket.

MR. BULLA: How many names did he mark on the card? A. Five names he marked altogether.

MR. McPIKE: Four besides his own? A. Four besides his own.

Q. Why didn't he mark the others he mentioned? A. Because he was not sure; that was his reason.

Q. He was sure about these five? A. Bet his life on them.

Q. And one of them was one of your men—Mr. Hurley? A. One of my men?

Q. One of your party? A. No, Hurley was a Democrat. I think you will find all Democrats, and he mentioned Bailey also.

Q. Did he tell you he knew these men personally? A. Yes; and one of those men, or one of those he mentioned that he did not mark, he said had worked in the shop with, and one he had been a schoolmate of, and other relations, of which I have forgotten, with these men. I could not tell whether the schoolmate and the one he worked with were marked or were left outside, but he knew he could get them. And my impression would be, but I would not swear positively, that it was Mr. Hurley he worked with.

MR. BLEDSOE: My question was whether he stated to you that he knew the men that he marked on this card? A. Yes, he said he knew them all.

Q. Did he say whether he had any conversation? A. He said I have talked with them. He said we have agreed to stand together. The whole purport of the conversation was that they were in together.

Q. And Mr. Barrington was where he could hear the conversation? A. Yes, he heard it all; heard every word that was said in that room, if he listened particularly.

MR. McPIKE: Now, you say you thought Mr. Johnson at that time had gone to you, not for the purpose of borrowing one hundred dollars from you on a promissory note, but to get a hundred dollars in gold coin? A. Yes.

Q. Did it ever occur to you that Mr. Johnson was trying to find out whether you were marketable? A. I do not know.

Q. Did it strike you that way? A. Yes.

Q. Were you afraid to deal with him because you were afraid he would throw you in the hole? A. Yes.

Q. Wasn't that the reason you put it off until eleven o'clock next Saturday? A. Yes.

Q. Were you not afraid, when Mr. Johnson came there with Mr. Barrington, as you said you were suspicious, that these two men were trying to get you in a trap? A. No, sir; I didn't think that. I did not think Mr. Barrington was trying to do anything like that.

Q. Wouldn't a party coming in there, *particeps criminis*, be just as bad as the other man? A. I couldn't say.

Q. But you were suspicious of him? A. I knew what Mr. Johnson wanted, from other sources.

Q. You testified in your direct examination that when Major Barrington came in there and that proposition was made, that you suspected he was in with Johnson all the time? A. Well, I knew there was something radically wrong.

Q. And didn't you testify that you thought he was in with Johnson on the deal? A. I did think so; yes.

Q. And didn't you testify awhile ago that those men were trying to put up a job on you; and didn't you testify that that is the reason you put it off until Saturday? A. No, sir. I said to Mr. MacKenzie, or he said to me, "You will get into trouble," when he first spoke to me about it.

Q. And you were afraid Mr. Johnson was trying to get you in a hole? A. I did not know but that anybody would that was in that kind of business, or that kind of a man—if you want to know what I thought. I want to say to the committee I deposited that card for this reason, which was in my mind, in order that I could not be accused of marking these names myself—removing all doubt. That was my reason—that I did not want to be put in the light of the possibility of a doubt.

MR. BLEDSOE: You did not know that any of those men were to be on the committee? A. From what Mr. Gould talked, I did not know but they all would be. I did not know whether they would be. I do not cast any reflection on these men, but only the conversation has come out.

Q. How do you know that the servant girl did not make the marks? A. Because I recognize the marks; because you will find one a short mark, and I recognize the marks themselves, so you won't make any mistake.

Q. You had no object, when you laid that card away, of saving it? A. Yes, I did. I was going to put it in the hands of the third party, and which statement I did make the third parties.

Q. Then you expected this railroad fight? A. I was protecting myself in every way, shape, and form.

Q. Didn't you feel that if you let Mr. Johnson know that you had it against him that he would vote for you? A. No, sir; I did not.

Q. What was your object in saving this card? A. The reason was simply as has just been intimated by counsel. I was accused of all sorts of corruption, of which I cannot call to mind, and I was accused of being a railroad tool, when the fact is every decision is against them; and I was accused of getting Mr. Shively for a railroad company. As a matter of fact he would not speak to me until Mr. Leeds came upon the stand and exposed it himself. I have been represented in every shape, form, and fashion, and I propose to have this matter so I could not have myself misrepresented. In nearly every instance there has been an attempt to blackmail me and besmirch me.

Q. Mr. Barrington is your friend? A. I know the Major; he and I are friendly.

Q. At that first meeting you had he witnessed what took place? A. Yes.

Q. And Mr. Barrington was your friend? A. I thought the Major would tell the truth.

Q. Did Mr. Johnson come there to sell his vote to you for one hundred dollars? A. I did not bring him there; he asked for the appointment.

Q. He went to your office, and you went there to meet him? A. Yes.

Q. And you had witnesses around to hear what took place? A. He never heard anything.

Q. Now, after this man had written this card, and you got all the evidence out of him you wanted, and you had him as you say where you wanted him, you refused to give him the hundred dollars then? A.

I didn't get all that I wanted to. I can see now by this investigation that I was right, and my attorney was wrong; that I should have got the contract signed by him, and paid him his hundred dollars, but I did not, and I lack that much evidence here, that is all.

Q. Were you surprised when Mr. Johnson introduced that bill against you? A. No; I do not know as I am surprised at anything a boodler does.

Q. Were you not surprised when Mr. Johnson introduced that bill, when he knew that you had evidence of his guilt? A. No, sir; I knew that Mr. Johnson thought he would simply ring the bell, and I would come.

Q. What do you mean by ringing the bell? A. That is a street expression.

MR. CLUNIE: A railroad phrase? A. A railroad phrase that was used a great deal in this enfranchisement of people when I was in politics.

Q. You thought that was a bell-ringing bill? A. I thought he was ringing the bell, yes.

Q. You thought this bill would bring one hundred dollars from you? A. No, sir; I knew it would not. I wouldn't give one hundred dollars if I had been impeached a hundred times.

Q. This bill was not for your impeachment, but to reduce your salary to one hundred dollars? A. I think if you investigate my official record that you will find that it is a pretty good record, sir; and you will find, and I say it without contradiction, that it is pretty hard to improve, because I could not improve upon it. I am not a demagogue and despise a demagogue. I made my fight before the people of the State without a pledge. I despise a man that makes a pledge, because I think he stoops to a demagogue. I made my fight on simply a business proposition. Of course there are intrigues, but business was the simplest and best proposition. It has been my aim to bring out a trial balance of the affairs of the railroad company and present them to the people of this State as based upon facts that cannot be contradicted.

Q. Didn't you know that this bill could not affect your salary in any way, introduced by Mr. Johnson? A. It could not.

Q. You knew you had been elected for four years? A. Unless there was a constitutional amendment, I knew it.

Q. Now what did this bill have to do with bell ringing; did you expect that you would be reelected Railroad Commissioner? A. I was elected by eight thousand majority after four years of my record was before the country. The "Examiner" named me and suggested my nomination for Governor. I will say to Mr. McPike that there was no feeling at all towards Mr. Johnson with me that prompted the writing of that letter, and the bringing or making of that charge. I simply wanted a halt in the Legislature, and state to them the fact.

MR. BLEDSOE: Do you consider that letter a part of the charge which this committee is investigating? A. No, sir; I do not consider it anything of the kind. I did it to call it to the attention of the people in the Legislature.

MR. MCPIKE: When did you first make up your mind to make this exposure that you speak of against Mr. Johnson? A. That was only a few days before that was written.

Q. Now the letter bears date the 26th—along about that time? A. The 26th of January.

Q. Did you send that letter immediately? A. No, sir; I had that letter in my possession two days, I think. I think that letter was sent Tuesday, maybe not until Wednesday—Tuesday or Wednesday.

[At the request of Mr. Hurley, a member of the committee, Mr. H. H. Johnson, the defendant, was put upon the stand, and called out of order.]

H. H. JOHNSON.

Called and sworn, testified as follows:

MR. CHAIRMAN: Now, Mr. Johnson, I will ask you if you ever, at any time or at any place, placed opposite the name of Mr. Hurley, or Mr. Johnson (yourself), or Mr. Schlesinger, or Mr. Schroebel, a mark, or by any means, for the purpose of indicating that they were or could be in any manner approached as regards bribing as to any vote that they might thereafter give in this Assembly? A. No, sir; I never did; and I will state further, Mr. Chairman,—

Q. I will ask you another question: Did you know any of the gentlemen named at the time—on the 8th of December, 1892? A. I did not, except Mr. Schroebel. I had not seen him, it must have been, for sixteen years.

[The committee here took an adjournment until to-morrow evening at seven o'clock.]

WEDNESDAY EVENING, February 8, 1893.

MAJOR P. L. BARRINGTON.

Called and sworn, testified as follows:

MR. SNORTRIDGE: Your name is P. L. Barrington? A. Yes.

Q. Where do you reside? A. In the city of San José.

Q. What is your business or profession? A. Journalist.

Q. Are you now engaged in that line of labor? A. I am, sir.

Q. You are the editor of a paper published there? A. I am an editor of a weekly paper called the "Democrat."

Q. Do you know James W. Rea, who has made the charges that are being investigated? A. I know Mr. Rea, yes.

Q. Do you know Mr. H. H. Johnson, the Assemblyman against whom these charges are preferred? A. I know Mr. Johnson.

Q. How long have you known him? A. I should suppose two or three months before election; that is, the last November election.

Q. Were your relations friendly or otherwise with Mr. Johnson? A. Perfectly friendly, sir. I assisted him in the campaign.

Q. Did you have any conversation at any time with Mr. Johnson in which the name of Mr. Rea was mentioned? A. I had one, yes.

Q. Can you state what that conversation was, and if so, state when it was? A. That was probably from two to three weeks after the last November election. Mr. Johnson came to my office and said that he wanted to raise one hundred dollars on a note. He wanted the note discounted to that amount, and wanted to know whether I could assist him in getting that note discounted. We had some conversation on it.

I told him that I would do my best, but I thought probably that we might be able to get it through the bank. I drew a note up in my office for Mr. Johnson to sign to his own order. It was for ninety days for one hundred dollars. I told him that I would go to Mr. Friant's bank—I believe they call it the Union Savings Bank—and it would be necessary to have an indorser, and I told him that I was perfectly willing, if Mr. Friant was willing, to become the indorser myself, which I was. And he said that he could get the indorsement of a mutual friend of ours, Mr. Slagts. I said all right. He got the indorsement before he brought the note to me, and I went down to Mr. Friant's bank to see him to make arrangements for the discounting of the note.

MR. BLEDSOE: Was that on the same day? A. I could not positively say so; whether the same day or the day after. It was within forty-eight hours, anyway.

Q. He took the note away to get it indorsed by Slagts? A. I made a note for him, and he took it away to get the indorsement. Mr. Slagts was not there. I saw Mr. Friant, and Mr. Friant told me that Mr. Johnson had been there in reference to the same business, and he had made arrangements with him, because Mr. Johnson said he could get Mr. Meserve to go on the note. That is what Friant told me.

MR. SHORTRIDGE: Who was Mr. Meserve? A. I do not know the gentleman; I believe he is a lumberman. I do not know him, and never saw him in my life that I know of. A few days after that I saw Mr. Johnson again and asked him whether the discount had been—

MR. CHAIRMAN: Where did you see him again? A. I would not like to say whether in my office or on the street. We were in the habit of meeting on the four corners—the four bank corners—and still he would come to my office. I did not charge my memory with it at the time. I had a thousand other things to think of.

MR. BLEDSOE: About how long afterwards? A. I should judge a couple of days, and Mr. Johnson told me that the note had not been discounted, and he did not get the money.

MR. SHORTRIDGE: What then did he say, if anything—what proposition did he make? A. I do not think anything was said that day, but a few days after that.

MR. BLEDSOE: Cannot you give an approximation of the time and the time of the week, and the time of the month, and what month it was? A. Upon my word, sir, I hesitate saying that, because I did not charge my memory. It was after the November election. I believe the election took place on the 6th, the first Tuesday after the first Monday.

Q. The 8th? A. The first Tuesday after the first Monday, and it was about ten days after that. That would be, say somewhere between the 18th of November and the first portion of December. The exact day of the month I could not tell. A few days after that. I didn't see him. I met him at my office on El Dorado Street, in the city of San José, and in talking the matter over generally he asked me what was my relationship with Mr. Rea.

MR. BLEDSOE: Talked what matter over? A. The matter of the note and general political business, and one thing and another. You know how two men will talk about these things; the exact discussion I do not remember, but the note came up. I told him that I knew Mr. Rea socially very well. He said that he must have this money; that he needed it to pay off some debts that he had incurred in his campaign,

and asked me if I thought Mr. Rea would discount the note. I said, "I do not know; I will see him, but Mr. Rea is the Chairman of the Railroad Commissioners, and may expect from you something in return for the services in reference to the Commission," and I think, my best recollection is, that I said, "The matter of this Commission, in all probability, will come up before the Legislature." He said to me, "All right; will you see Mr. Rea?" I said I would.

MR. CHAIRMAN: In the conversation did he make any statement as to his intentions, or as to what he would do upon that question—that is, the question of the Railroad Commissioners? A. The exact words—but the inference that I can recollect from the conversation that we had was that he was not antagonistic to the Railroad Commission.

MR. BULLA: Cannot you give his words? A. I cannot. If I had expected that this would come up, and I would be called here, I would have made a memorandum of it.

Q. Did you not think that that was rather an important subject? A. No, sir; it was particularly a business matter.

Q. I am speaking with reference to what Mr. Rea might expect in reference to the Railroad Commission? A. I said, "Yes." I thought he might expect something.

Q. What did Mr. Johnson reply? A. I didn't think any more of that than any one else wanting me to go to Mr. Friant, and Mr. Friant might want something for the favor.

MR. CHAIRMAN: What was Mr. Johnson's reply; did he make a direct reply? A. No, sir; he said, "All right; will you see Mr. Rea, and make an appointment?" I said, "Yes." I did see Mr. Rea.

Q. When? A. I think the next morning.

Q. Where? A. I was going down to his office. His office at that time, I believe, was different from what it is now. He had an office, I think, at No. 7 West Santa Clara Street, with the firm of Astern and somebody, and had an office there—real estate.

Q. Astern & Ross? A. I do not know. It has changed now; it was Astern, Diggy & Co.

MR. BLEDSOE: Where did you meet Mr. Rea? A. I met Mr. Rea outside the Anzerals House, on West Santa Clara Street; he was talking to several people there. I called him aside, and asked him if I could say a few words. "Yes," he said, "certainly." I told him the purport of my meeting with Mr. Johnson, the Assemblyman-elect. Mr. Johnson wished to borrow on a note, and that I thought he was all right with the boys, with the Commission.

MR. BLEDSOE: That is what you said—all right with the boys? A. He might have inferred that. I thought he would stand in with the Commission. Mr. Rea says "All right; tell him that I will meet you," mentioning himself and myself, "to-morrow morning at eleven o'clock at my office."

Q. What did you understand when he said my office; what place did you understand? A. Well, the Electrical Improvement office, because he designated "at my office," Foster & Hicks' office—their office is back of Foster & Hicks. I reported to Mr. Johnson that fact, and the next morning we met and went down there together, I having the note in my possession.

MR. BLEDSOE: Where did you find Mr. Johnson and report to him the result? A. Mr. Johnson came to my office by an appointment he made.

Q. The next morning you went with Mr. Johnson to Mr. Rea's office? A. I went about eleven o'clock and took the note which I already had properly indorsed. It was a business transaction, and I kept the note to show it.

MR. CHAIRMAN: What occurred when you got to the office? A. When we got to the office Mr. Rea had not arrived, and I think it was a couple of minutes between the time we arrived there and Mr. Rea's arrival. We then went into Rea's office, passed into the general business office where the desks are, and then went into the rear office, and I introduced Mr. Johnson to Mr. Rea.

MR. BLEDSOE: How did you introduce him; what did you say? A. I said, "Mr. Rea, this is Assemblyman-elect Johnson. Mr. Johnson wishes to borrow one hundred dollars on a note, and he will give you a paper that he will stand by the Commission." I believe those are about as near the exact words I used when I introduced Mr. Johnson.

MR. BLEDSOE: Now, you say you said to Mr. Rea that Mr. Johnson wished to borrow some money on a note, and he would give him a paper that he would stand by the Railroad Commissioners? A. The words I used.

Q. Had you received authority from Mr. Johnson to make that offer? A. Nothing more than the conversation that I told you before.

Q. Had any written promise to stand by the Commissioners been referred to in your conversation with Mr. Johnson at any time? A. No, sir; not that I know of.

Q. And how did the idea of a written promise with Mr. Rea happen to come into your mind at that time? A. Well, I suppose that probably Mr. Rea would exact that from him; if he was willing to stand up Mr. Rea might exact something written from him.

Q. Why did you expect that Mr. Rea would expect a written promise if he was only going to borrow one hundred dollars? A. Nothing more than the general routine of men in business transactions. I am something like twenty-eight years in business transactions—newspaper—and I know what men exact and expect.

Q. Have you been compelled to sign with Mr. Rea in any business matters? A. I have no business matters with Mr. Rea, either political or otherwise. I am opposed to him—diametrically opposed to him—fight him every day of the week.

MR. BULLA: You knew that when you went there that part of the understanding, or agreement, or inducement for the loan was Mr. Johnson's agreement to stand by the Commission, did you? A. That was my impression; that was my idea. I only say that from the conversation I had.

Q. Mr. Rea knew at the time that you were aware of that part of the condition or contract? A. I cannot say what Mr. Rea knew.

Q. You have stated that the day before that you had said to him that Mr. Johnson would stand by the Commissioners, and he said all right? A. I do not know whether Mr. Rea knew that, only what I told him. All I can swear to is my information that I brought to Mr. Rea. He did not know only what I told him.

MR. BLEDSOE: You knew, then, that the consideration of this note would not be the interest which it drew; that was only one part of the consideration, the other part was to promise to stand by the Railroad Commissioners? A. I knew nothing of the sort, sir.

Q. Have you said so? A. I have not said so.

MR. SHORTTRIDGE: What did you mean? A. I meant that this was a business transaction. There was a note that was well secured, and the matter, as far as I knew, was purely a business transaction.

MR. BLEDSOE: Is it a common practice in San José when people borrow money not only to agree to pay interest, but also agree to do something else as a consideration of a loan? A. I do not know anything about the common practice of borrowing money. I very seldom do it myself, and I do not know anything about it. Then I handed the note to Mr. Rea and I said, "Mr. Rea, this is the note, and Mr. Slagts is on the back of it. I know Mr. Slagts well, and he is in every way competent to indorse this note;" and if I am not mistaken, I believe I told Mr. Rea the business that Mr. Slagts was in; but I would not like to swear that I told him that. But then I was perfectly willing to indorse Mr. Slagts' responsibility, and Mr. Rea took the note, and there was a little—the exact conversation then was a sort of a desultory conversation, and turned upon the weather and one thing and another for probably three or four minutes. I then called Mr. Rea's attention to the note, because that was my only business in coming there, to secure this financial relief for Mr. Johnson that he wanted. Then I again arose. The question then broached was the subject of the Railroad Commissioners.

MR. SHORTTRIDGE: What did Mr. Rea do, if anything, with the note at that point? A. Mr. Rea arose from his chair and he handed Mr. Johnson the note. Now the exact words that he said I cannot give. I will give the context. He said, in this respect, Mr. Barrington, I care nothing for the note or its indorsement. He said, Mr. Johnson and myself understand each other, or know each other, or something like that. He said, Mr. MacKenzie has spoken of you, Mr. Johnson, to me. They might not possibly be the exact words used, but they are the context, because I remember that distinctly.

Q. Did Mr. Johnson take the note from Mr. Rea? A. Mr. Rea then handed the note, to the best of my recollection, to Mr. Johnson, and Mr. Johnson then held it in his hand.

MR. BLEDSOE: How did you get possession of the note? A. It was handed to me before I went to Mr. Rea's office.

Q. You have not had it since? A. No, sir; I have not seen it since.

MR. SHORTTRIDGE: What did Mr. Rea say in regard to the hundred dollars after he returned the note? A. I think he said, "I am pushed myself at present for money; I have been paying my taxes, and am compelled to borrow money myself," or something of that sort.

Q. That is what Mr. Rea said? A. That is what he said.

MR. SHORTTRIDGE: Did he say anything more; did he say anything about what Mr. Johnson really wanted when he returned the note to him, if he did say anything? A. Excuse me one moment. It had been some months ago, and my time has been pretty well occupied. I think—in fact I do not say I think, I might say I know it—he said the cold-blooded fact is you want a hundred dollars; or the fact is you want a cold-blooded hundred dollars; something of that sort.

MR. BLEDSOE: You think that? A. I know that remark was made.

Q. Do you think that, or do you know that? A. When I first spoke I thought it, but now, since I have thought it over again, I know it; I am positive.

MR. SHORTRIDGE: What did Mr. Johnson say, if anything, in reference to the statement of Rea? A. We were all laughing in there, and he said "Yes."

Q. When you introduced Mr. Johnson to Mr. Rea, as you have testified, did he assent to that form and mode of introduction, or resent it? A. Mr. Johnson didn't say anything at all; simply shook Mr. Rea by the hand, and we sat down at that time. Mr. Johnson had told me he didn't know Mr. Rea.

Q. He had told you he did not know Mr. Rea? A. Yes.

Q. And asked you to introduce him? A. And I introduced him; yes.

MR. BLEDSOE: When Mr. Rea said, "Mr. Johnson and I understand each other," did Mr. Johnson make any reply to that? A. Mr. Johnson did not make any reply; not a word, sir.

MR. SHORTRIDGE: Please go on.

A. Mr. Rea then said: "Mr. Johnson, I understand, or I am told," or which words he used I cannot tell, "you have signed a pledge with the Traffic Association." Johnson told him that he had. Then Mr. Rea entered into a discussion of the attitude of the Railroad Commissioners to the Leeds Traffic Association; rather a lengthy one, and as it was a matter that I had heard so much during the campaign, I paid no attention to the language; but Mr. Rea explained to him the attitude which the Commission assumed in reference to the Traffic Association, and his words I cannot tell you. They were probably occupied, it might have been five or six minutes; probably shorter, probably longer. Then the conversation drifted to the question of the election of the United States Senator from this State.

MR. BLEDSOE: Were the various candidates for United States Senator discussed? A. Yes; The names of three brought up—Mr. Stephen M. White, Mr. W. W. Foote, and then Mr. Marion Cannon, the Populist—the three of them, and they talked about the three of those and their capabilities and qualities for the office, and then Mr. Rea, during the conversation, came up about the possibility or probability of electing a Republican United States Senator. That was the subject of conversation between him and Mr. Johnson. I did not engage in it at all, because my convictions were formed; because I knew I was a White man.

MR. BULLA: Did Mr. Rea bring up that subject? A. In the general conversation they were talking about the men, and this and that.

Q. Did you say that Mr. Rea brought up that subject? A. No; I say Mr. Rea and Mr. Johnson. I did not engage in the conversation at all—that is, the portion of the conversation following upon Mr. Rea's description of the attitude of the Commission, and this Leeds investigation—and whether Mr. Rea brought it up, or Mr. Johnson brought it up, it is a matter not clear in my mind. I do not think that Mr. Rea did. I think the question came up in—I think that question came up in this way, if I am not mistaken—I think something about "What do you think about United States Senator?" I think Mr. Johnson said something of that kind. I could not tell you exactly how that was brought up, but I know the two of them together discussed Mr. White, Mr. Foote, and Mr. Cannon.

Q. Did Mr. Johnson make any explanation as to why he had signed this pledge to the Traffic Association; did he explain why he had done so, and what was the reason, if he gave any? A. He said he did so to catch some vote he wanted—that he wanted in his district.

MR. CHAIRMAN: You believe he said that? A. To catch some vote; the exact words I could not give.

Q. What you mean to say, he did say he signed it to catch some votes? A. Yes.

Q. Did he mention the different ones who had signed it? A. Signed the pledge? He didn't mention any names; he mentioned four or five of them were in the same fix, or same box—four or five of them.

MR. SHORTRIDGE: Take up the United States Senator proposition? A. I think Mr. Johnson said that it looked very much as though Cannon would slip in between the two of them. That was said in a laughing way, and Mr. Rea smiled back at him, and then this question arose which I have just related in reference to a United States Senator; that followed on.

Q. What was said on that? A. Just the same as I have related just now. He said there were four or five of them. Well, Mr. Rea said—

Q. Four or five of whom? A. Four or five members who had been elected. Four or five that he knew had signed the pledge and had been elected.

MR. CHAIRMAN: Four or five had signed the Traffic Association pledge? A. Yes; he said he signed the Traffic Association pledge, and four or five more of them.

Q. There were four or five more of them? A. Yes; that would be the language following up the preceding remark.

MR. SHORTRIDGE: Did he say he knew them? A. Yes; he said he knew them. Then Mr. Rea asked him how he thought they would stand on the question of the Republican United States Senator. He said that they had not; he could not tell, he said, because they had not done anything and would do nothing until they reached Sacramento. He said, "Will they vote for a Republican United States Senator?" He said, "It is hard to desert the party."

Q. That is, will they vote for a Republican United States Senator? A. He said, "It is hard to desert the party." Then Mr. Rea said to him: "Will you write on a piece of paper the name and the district of these you speak about?" Mr. Johnson said, "I have in my pocket a card with their names and their districts printed on it." He put his hand into his pocket and did not find it, he turned to me and said, "Major, I gave you the card this morning; will you let me have it?" I put my hand in my pocket and took out my wallet and took out the little card and handed it to Rea, who handed the card to Mr. Johnson, and Mr. Rea asked Mr. Johnson to mark on that card the names of those he thought would vote for a Republican United States Senator. And my lead pencil was used. I took my lead pencil from my pocket and handed it—I am not sure whether I first handed it to Mr. Rea or directly to Mr. Johnson, but I know it went into Mr. Johnson's hands. Mr. Johnson marked some names on the card, that card he had then, and then Mr. Rea told him, asked him to be very careful, and my pencil was handed back to me and went into my pocket, and then Mr. Rea handed—whether he handed him a pencil from his own pocket or from the desk, I do not know, but he handed him another pencil and Mr. Johnson made some marks on that card.

Q. When was it that your pencil was used? A. The first time after I handed the card. The first name that he marked was marked with my lead pencil.

Q. How many did he mark? A. I could not tell you that. I was as far away as you are, sir.

MR. CHAIRMAN: What kind of a pencil was your pencil? A. I use that kind altogether, sir. [Showing]

Q. It is an ordinary lead pencil? A. It is a reporter's lead pencil, ordinary.

Q. It is not an indelible pencil? A. No, sir.

Q. Was it the same kind of a pencil Mr. Rea had? A. I do not know that, sir. I did not inspect his pencil at all, sir.

Q. You say you did not see the kind of pencil Mr. Rea had? A. Not to say whether indelible or not.

Q. Not to tell whether an ordinary pencil or not? A. I couldn't tell whether it was an ordinary pencil or a stylograph, or any other kind.

Q. You would not know the pencil if you would see it? A. I would not.

MR. BLEDSOE: Have you stated all the conversation that occurred before Mr. Johnson marked the card? A. To the best of my recollection, I have, sir.

Q. Then this marking was in connection with the vote for a Republican United States Senator? A. It was, sir. In connection with the conversation and the men they were talking about.

Q. Were all the names marked in connection with the Republican United States Senator? A. All that I saw marked, yes.

Q. If there had been any other conversation, you were in a position to hear it? A. I was undoubtedly, sir; I was within five feet of them.

Q. And all the conversation that you heard prior to the marking of this ticket was in relation to a Republican United States Senator? A. Only a senatorial question. After the first remark about the three possible candidates, then they went into a Republican United States Senator.

Q. And you were as close to those men as you are to me? A. Yes; Johnson sitting here, Rea's desk was along here, and he sat there, and I was probably that far; and I was probably two feet away from the desk, in the corner, between the desk and the lounge, on a chair.

Q. Could any conversation occurring between those two men in an ordinary loud tone of voice have escaped your attention at that time? A. Yes, because when I found that they were discussing these matters, when they came to United States Senator, I got up from my chair and went to the lounge, four or five feet away, and threw myself on the lounge. My business was ended.

Q. Were you observing them when the card was marked? A. Yes, I was sitting in a chair.

Q. Who did he give the card to then? A. Handed it to Mr. Rea.

Q. You have testified that you heard a conversation and was as close to them as to me; now the question is, suppose a witness would come before the committee and testify that a portion of those marks were not marked in regard to United States Senator, would that witness be telling the truth or not? A. That is hard to answer. I have not seen the characters, and other names might have been marked on it since.

MR. CHAIRMAN: The question is this: Was there any other purpose mentioned in regard to the marking of this card save United States Senator? A. Not that I could remember, sir.

Q. Now, he asked you if a witness came before this committee and stated that there was some other purpose in connection with those marks

on that card would he be telling the truth? A. I would not like to say that, because my recollection is not clear enough to say. I will not state anything that I am not positive of.

MR. BLEDSOE: You are positively certain that you were as close to these two men as you are to me? A. No doubt of it.

Q. Have you any doubt in that matter? A. Not a particle.

Q. What tone of voice were those two men talking in? A. Probably a little lower than you are speaking now.

Q. About as loud as you are speaking—about that tone? A. In an ordinary conversational tone of voice.

Q. No attempt at concealment? A. Not any at all, sir.

Q. And you were in a position where you could hear a good deal of the conversation? A. Until the time I arose and took my seat on the lounge.

Q. Had the marking on the card been concluded at the time you arose and took a seat on the lounge? A. As far as I saw, yes.

Q. What became of the card after that was concluded? A. I saw it handed to Mr. Rea.

Q. He handed it back to Mr. Rea before you went to the lounge? A. I saw him hand it to Mr. Rea, yes. I saw him hand it to Mr. Rea.

MR. CHAIRMAN: And you saw Mr. Johnson make those marks on the card? A. I saw Mr. Johnson make marks on the card I handed to him. I object to the word "those."

Q. You saw Mr. Johnson mark on the card that he handed to Mr. Rea? A. I saw Mr. Johnson make marks on a card that he got of Mr. Rea, and handed it back to Mr. Rea.

MR. BULLA: Would you know that card if you saw it again? A. I think so, sir.

MR. CHAIRMAN: Just describe that card. A. It was a card that he had about that long; it was a double card, and folded.

Q. The character of it, what was it? A. It was just such a card as they generally use, giving the names of the members of a fair, and the contests there are, and all that, and folded together, and making two leaves, or a four-sided card.

Q. Do you remember the manner of the card? A. I do not.

Q. You think you would know the card if you saw it again? A. I would like to see the card before I answer that positively.

MR. BLEDSOE: Now, Mr. Barrington, how many names did Mr. Johnson mark with your pencil? A. I could not say.

Q. You say the first name was marked with your pencil? A. The first name he marked was marked with my pencil. How many I could not tell.

Q. How many names were marked with Mr. Rea's pencil? A. I could not tell that, sir.

MR. CHAIRMAN: Did you ever see that card again after it was handed to Mr. Rea? A. Not to my recollection, sir.

Q. Can you state positively, yes or no, whether you have seen that card since or not? A. I know I did not.

Q. You are positive that you have never seen it from that day to this? A. I have not seen it at all except when I pulled it out.

Q. I mean except that. A. No, sir; I have not.

Q. I will ask you, Mr. Barrington, if that is the same card that was handed by Mr. Johnson to Mr. Rea (showing)? A. It was a similar

card to that, but I do not know whether that is the card. It was a similar card in shape and make up, but I cannot identify that card. I did not pay any attention to it, and did not place a mark on it.

MR. SHORTRIDGE: Was there any mark on the card when you handed the card to Mr. Rea? A. No; I think I stuck it in my pocket in my office.

Q. What is the answer—no? A. No, there was not.

Q. There was no mark on it when you handed it to Mr. Rea. What was said, if anything, in regard to the number of men mentioned—how many did he mention?

[Objected to.]

Q. Did he or not say that he knew these men? A. He said he knew them, yes.

Q. Did he mention any relationship existing between him and them? A. He mentioned—he said one of them he knew, and he had been a schoolmate of his, but the name of that man was not mentioned.

Q. Did he make any remark, if you know, as to his own name—that is to say, in regard to it? A. Yes; there were two Johnsons on the card, and he told Mr. Rea that he would mark his own name, that Mr. Rea might know his initials.

Q. I will ask you if Mr. Rea made any remark to him as to the character or the reputation of these other men that he mentioned—that is to say, whether they were with him and would stand together or not?

[Objected to.]

Q. What did he say about these men, if anything—what question did he ask in regard to these men? A. I know what you mean, sir, and I am just thinking of it. Yes; Mr. Rea said, "I suppose they are all out for the stuff"—something to that effect.

Q. What answer, if any, did Mr. Johnson make? A. Oh, laughingly he said, "yes."

Q. You heard that? A. I undoubtedly did, sir.

Q. How long did this conversation or interview last, if you remember? A. From half an hour to three quarters. I know because I was back at my office before twelve to let my boys go to lunch; but from half an hour to three quarters the whole thing, from the time we entered until we left.

Q. What did you do, if anything, after the interview had terminated? A. Well, I felt that I was a little bit out of place.

Q. Why, what do you mean by that? A. Well, I came there to introduce a gentleman to a friend of mine for a purpose.

Q. What did you do subsequently? A. I asked Mr. Rea if he would step outside, and he sepped outside, and I said, "Mr. Rea I am chagrined, as I did not come here for any political purposes at all," I said, "I hope that you won't think we came here for that purpose. I came simply for the purpose of having this note discounted," and Mr. Rea said to me —

MR. MCPIKE. Do you know whether Mr. Johnson heard that? A. Upon my word, I do not know. I was outside.

MR. CHAIRMAN: State it? A. I said I came here for this purpose, and Mr. Rea, I hope—

[The answer was ordered stricken out.]

Q. You apologized to Mr. Rea? A. I apologized to Mr. Rea, because I did not want him to think that I had come for a purpose that I had

not come for; that is all. I am not in anything but a legitimate business.

MR. BLEDSOE: Do you consider it a legitimate business to take a note to a man properly indorsed and carrying proper interest, and as part of the consideration sign a contract to do something that is wrong? A. I do not know whether it was wrong or not. May have one opinion about it to-day, sir, and change to-morrow. You see that every day of the week everywhere. I have an opinion to-day, and change to-morrow, if necessary to do so. I simply came there to have that note discounted.

MR. SHORTRIDGE: Did you and Mr. Johnson go out together from this private room then? A. We did.

Q. What conversation, if any, took place between you and Mr. Johnson in regard to Mr. Johnson? A. Mr. Rea had told Mr. Johnson he would meet him the following Saturday at eleven o'clock, and when we got outside I said to Mr. Johnson, "I will not be present on Saturday; I have fulfilled my promise—I have introduced you to Mr. Rea;" and Johnson said, "Why, I knew him ever since I was knee high." I said, "Good morning," and I went off.

MR. MCPIKE: Which one was knee high? A. Johnson. Johnson was the younger man, and I think a better looking man, too.

MR. BULLA: You say you drew up the note yourself? A. I did; yes.

Q. And you knew when it was indorsed, did you? A. Mr. Johnson took it away and brought it back indorsed.

Q. Did you see it after it was indorsed? A. I did; yes.

Q. Was it indorsed—I think you said it was indorsed by Mr. Slagts? A. Yes; it was indorsed by Mr. Slagts and Johnson both.

Q. Was it indorsed at the time it was taken to the bank to get the money? A. I do not know anything about him going with the note to the bank.

Q. Did you know that the note was indorsed at the time Mr. Johnson took it to the bank? A. That I do not know, sir.

Q. You do not know whether it was? A. No, sir.

Q. You do not know when the note was indorsed? A. The note was indorsed from two to three days after I drew the note up, and brought to me, and when I took the note with me it was indorsed by Mr. Slagts.

Q. State the conversation that you had between you and Mr. Johnson when he went to the bank and failed to obtain the money on the note indorsed by Mr. Slagts, at that time, if you know. A. As far as I was told; I didn't see the note at that time. I was told that the note was indorsed by Mr. Slagts, and the bank would not give him the money. Mr. Johnson told me that himself.

Q. Did he say why he did not get the money? A. He did not, sir; I did not ask him.

Cross-Examination.

MR. MCPIKE: He did not tell you why the note was not honored at the bank? A. He did not, sir.

Q. What was that you said a little while ago about a man by the name of Meserve? A. I said I called before that to see Mr. Friant, and after I had spoken to Mr. Johnson about taking the note to Mr. Friant's bank, and Mr. Friant told me that Mr. Johnson had been there and he promised to get Mr. Meserve's name on the note, and I said "I am willing to go on the note myself."

Q. Then, when you found that he had presented the note, signed by Mr. Slagts, you had already seen Mr. Friant, and knew that he would take a note indorsed by Mr. Meserve. Didn't you understand that the reason why he did not get money from Mr. Friant was because Mr. Meserve had not indorsed it? A. Yes, because Mr. Johnson told me Meserve was out of town.

Q. You didn't know it then? A. I said, "Did you get money?" and he said, "No." I said, "Why not?" He said, "Mr. Meserve was out of town."

Q. When did you first meet Mr. Johnson, and where did you form acquaintance with him? A. Exactly where I met Mr. Johnson I cannot recollect that, but it was a week or two weeks before the Democratic Convention at which we nominated Mr. Johnson.

Q. When was that? I don't know the date; it was about six weeks or two months before November.

Q. Six weeks or two months before November? A. Before the election.

Q. And you do not recollect where you formed his acquaintance? A. It was ten days or a couple of weeks before that, but exactly where I met him I cannot recollect, sir.

Q. Were you not a member of the Willow Glen Club—a Democratic club? A. I am, sir. I do not know whether the club is in existence—whether it is out of existence or not.

Q. When did you become a member of that club? A. I think I became a member of that club—it must have been about a month or six weeks or so before the election. I became a member a night or two before the night we met out at the corner of San Salvador and Gardner. It was at the Central Democratic Club meeting, and Mr. Johnson and another gentleman came down, representing the club, and to secure from them a contribution towards building a Wigwam, that we were wanting to put up out there.

Q. That is the time you met Mr. Johnson? A. I could not say this time, or whether I met him before; I cannot recollect the exact time and place where I met Mr. Johnson.

Q. Was Mr. Johnson a member of your club? A. Yes, he was President of it.

Q. When did you next see Mr. Johnson? A. I saw him next time a couple nights after that when we met in a little room out on San Salvador and Gardner, and obtained a subscription list to pay for the Wigwam. We became members and subscribed our mites towards it.

Q. You subscribed something to the club? A. I gave a dollar, I believe.

Q. Were you particularly interested in politics in Santa Clara during the last campaign? A. Except if I had some friend on the Democratic ticket. I run a thoroughly Democratic paper, and I took an interest in politics.

Q. Your paper is Democratic? A. Unflinchingly.

Q. You support no Republican? A. No, sir; I support no Republican nomination. I run a straight Democratic paper. I am unflinchingly and uncompromisingly a Democrat.

Q. An advocate of the principles? A. Yes, I do not think there is a stronger and firmer Democrat in the whole State than I am, sir.

Q. How well did you know Mr. Rea at the time you formed an acquaintance with Mr. Johnson? A. I have known Mr. Rea probably one or two years now.

Q. How long have you been in San José? A. I have been in San José two years the 22d of this month.

Q. Then you have known Mr. Rea ever since you have been there? A. Yes. When I first came to San José I was managing a paper called the "Better Times." I was city editor and we were waging war against Mr. Rea, and in accordance with that, I have continued the war.

Q. Have you ever ceased the war against him? A. I have not, and I do not suppose I ever will, sir.

Q. Kept it up ever since? A. I have, sir.

Q. Has Mr. Rea ever loaned you any money? A. Yes.

Q. How long since? A. I think it was last August.

Q. A year ago last August? A. Yes.

Q. Have you ever repaid it? A. I did.

Q. When? A. I think a day or two afterwards.

Q. A day or two afterwards. When did he next loan you any? A. Never again to my recollection.

Q. When did you borrow any money of him afterwards? A. I have never borrowed any money except that; and I borrowed that at the race course because I run short.

Q. Sold short on the races? A. I sold short and got left.

Q. How much did you borrow? A. I borrowed five dollars from him.

Q. Has he assisted you to any extent pecuniarily or otherwise, except to loan you five dollars when you sold short? A. Never at all, sir.

Q. Has he contributed anything to the support of your paper that you are now connected with? A. No, sir; I wish he would.

Q. Have you ever applied to him to contribute anything to the paper? A. I have not, sir.

Q. If he contributed to the paper would it change the political complexion of it. A. No, sir; but he would have my undying gratitude.

Q. And you would be gracious? A. I should.

Q. And would expect—what? A. I would expect to pay it back as good as I got—the money.

Q. What are Mr. Rea's politics? A. Republican.

Q. When did you see Mr. Rea during the last campaign—between the time you met Mr. Johnson and the time you went with Mr. Johnson to Mr. Rea's office? A. I saw him probably once or twice a week on the street, and met him on one of the "financial corners," and I have met him down street, and laughed, and chatted, and shook hands, the same as I have met you.

Q. You say you know Mr. Slagts? A. I have known Mr. Slagts as long as I have Mr. Johnson. Mr. Slagts was referred to.

Q. You consider Mr. Slagts a gentleman of respectability? A. I think he is a very respectable individual.

Q. You think he was financially able to go security on a note for one hundred dollars. A. I would go on his indorsement for one hundred dollars.

Q. He stands pretty well in that community? A. He does, as far as I know.

Q. You consider him a gentleman? A. I never found him otherwise.

Q. And would take his word? A. I would take his word; yes, I would take his word.

Q. Did you call on Mr. Johnson at the Wigwam that evening, in the presence of Mr. E. Slagts, and say that Mr. James Rea would put two hundred dollars in Mr. Johnson's fight, if he wanted it? A. No, sir.

Q. Did you one evening, between the first of July, 1892, and the first of December, 1892, in the presence of Mr. Johnson and Mr. Slagts, in Santa Clara County, one evening, at a place called the Wigwam, say to Mr. Johnson, in the presence of Mr. Slagts, that Mr. Rea would "put two hundred dollars in your fight if you want it?" A. No, sir.

Q. Did you say any words to that effect to him? A. No, sir.

Q. Did Mr. Johnson, in response to that, at the same time and place, and in the presence of the same parties, say to you, "I do not want anything to do with Mr. Rea; I am not doing that kind of business?" A. No, sir.

Q. Did you write a note to Mr. Johnson about a week later than the conversation which you say did not take place? A. I only wrote one note to Mr. Johnson, that I recollect of, in my life.

Q. That was about the first of December? A. That was after the Legislature had met. I inclosed him a draft on an amendment that I thought ought to be made in reference to the Justices of the Peace of Santa Clara County, regulating their fees, and I asked him to propose that. I drew up a draft of the amendment to the amendment of the ordinance simply that the fees charged up by Justices hereafter should be such as are allowed by law. I changed the whole thing just by putting in one word.

Q. Did Mr. Johnson owe you anything at the time of the election? A. Mr. Johnson owed me for printing his card.

Q. How much? A. A little bill—altogether, ten dollars.

Q. Ten dollars? A. Yes.

Q. Did you, along about the first of December, write a note to Mr. Johnson, asking him to call at your office? A. Yes, I did; you are correct there. I did not remember that I wrote him a letter asking him to call at my office; I was pushed for money, and wanted all I could call in.

Q. You inclosed a bill to him? A. I do not think I inclosed a bill to him. I do not think it was a line or two, the whole thing.

Q. He called in response to your note? A. I do not know whether he called in response to the note; he called there within four or five days afterwards.

Q. Didn't he call the very next day? A. I could not state, sir.

Q. Are you willing to swear to that? A. No, I am not.

Q. What were the first words he said to you when you came together. A. I cannot remember that, sir.

Q. Did you say to him, "How are you off for coin?" A. I do not remember using that expression.

Q. Did you say, "How are you off for money?" A. I said, "I want some money. Have you any money, Mr. Johnson?"

Q. What did he reply? A. He said he had none.

Q. Is that all? A. I remember exactly what he said; he said, "I have none."

Q. Didn't he say "I have none now, but will have some in a few days and will pay you?" A. I cannot tell you exactly the words, but he told me he had none, at that time.

Q. Did you say to him, "Why don't you borrow some—you can get it if you want it?" A. No, sir.

Q. Didn't you at that time use that language to him? A. I never used that language to him at any time since I have known him.

Q. Didn't Mr. Johnson reply to you after you had used those words in the first place, "I am not in the habit of borrowing," and in the second place "I do not know who to borrow from?" A. No, sir; emphatically no.

Q. Didn't you say, "how much do you want, and how much would you like to have; would one hundred dollars do you?" A. I did not.

Q. In words to that effect? A. No, sir; I did not.

Q. Did he not reply to that "One hundred dollars would put me on my feet in good shape?" A. No, sir.

Q. Or in words to that effect? A. No, sir.

Q. Did you say to him, "Draw your note for one hundred dollars, and I will go down to Antone Friant's and get the money, providing that Ed. Slagts will sign with you?" A. I told him when he came to me—I said that to him, but not at that time. I said to him afterwards, if he would make his note for one hundred dollars, I would see if we could not get it from the bank, and that was after he told me he needed one hundred dollars, and was pushed for some debts that he incurred during his campaign, and asked me for to assist him.

Q. Did you tell him to go to Mr. Friant? A. I told him to go to the bank.

Q. Did you mention any particular bank? A. I did. I mentioned Mr. Friant's bank, and we could fix it there, as he was in the campaign with us.

Q. Did he not say in reply to you, "All right, I will get Ed. Slagts with me?" A. He said, "Yes, all right; you draw the note," and I drew the note, and I said, "You want an indorser," and he, in response, said, "Yes, I will get Ed. Slagts to sign it."

Q. Did he take the note away with him? A. I drew the note, and he signed it and indorsed it in my presence, and took it with him.

Q. Mr. Johnson indorsed it in your office? A. Yes.

Q. Mr. Slagts, too? A. No, sir; I drew the note at Mr. Johnson's own order, and Mr. Johnson then signed it and then indorsed it, in order to make it negotiable. He signed and indorsed that note in my office. Mr. Slagts did not indorse it in my office.

Q. Didn't you know a note made payable to yourself, signed by you, is negotiable without being indorsed? A. Certainly.

Q. Why did he indorse it? A. Because the bank wanted an additional indorser.

Q. If Mr. Johnson drew a note payable to himself, why did he indorse it? A. If you will give me a retaining fee, I will tell you; if you know anything about banking you will know that.

Q. Did Mr. Johnson return to you after he had taken the note away which you say he signed and indorsed himself, and tell you that Mr. Friant would not let him have the money? A. He told me that after I had gone to see Mr. Friant and Mr. Friant had told me that Mr. Johnson had promised to have Mr. Meserve's name on the back of the note.

Q. He told you he could not get the money, and brought the note back to you? A. He did not bring it back to me.

Q. Did he not bring it back with him? A. I do not know, sir.

Q. Didn't you see it. A. I did not.

Q. Did you never have it in your hands afterwards? A. Not until he brought it to me with Mr. Slagts' name on the back of it.

Q. That is the day I speak of? A. That is the day he brought it to me, and we went to Rea's office.

Q. Did you not say to him when he came back, with the note indorsed by Mr. Slagts, when he informed you that he could not get the money of Friant, did you not say to him in these words: "You come with me; you give me the note, and I will get you the money?" A. No, sir.

Q. You did not? A. I did not.

Q. What did you say? A. I do not remember the remarks that you are talking about.

Q. Did that ever happen? A. Not in reference to the note; it did not.

Q. You went to Mr. Friant's one day? A. I did by myself.

Q. And was it that day or the next day that Mr. Johnson called with the note? A. I think a couple of days afterwards.

Q. After you went to see Mr. Friant? A. After I saw Mr. Friant. I saw Mr. Johnson a day or two afterwards, and he told me Mr. Friant would not discount it; and he told me for some reason, and didn't tell me the reason. I didn't ask him.

Q. What other conversation did you have at that time? A. I couldn't tell you, sir.

Q. When did you next see Mr. Johnson? A. It was shortly after that, when he asked me what my relationship with Mr. Rea, or how I stand in with Mr. Rea.

Q. Now, let me ask, if the day he brought the note back to you, if he did not tell you he could not raise the money at Friant's; that Mr. Friant wanted Mr. Meserve, and he couldn't get him as an indorser; that Mr. Slagts had indorsed the note? And didn't you say, "You come with me; give me the note; I'll get you the money?" And did you not go down Lightstone Alley, across Santa Clara Street, and go into Hicks & Foster's real estate office? A. With whom?

Q. With Mr. Johnson. A. No, sir.

Q. Who did you go with? A. I did not go that day, to my recollection, to Foster & Hicks' office at all.

Q. Is your recollection very good? A. About as good as the average man. I recollect the truth always, sir.

Q. Anything more? A. Sometimes I recollect stuff that other people don't want me to recollect.

Q. When you went did you go down Lightstone Alley and across Santa Clara Street? A. I didn't go at all, sir.

Q. You did not go with Mr. Johnson to Mr. Rea's office? A. I did on this particular occasion.

Q. This particular occasion? A. That particular occasion. I never was with Mr. Johnson in Mr. Rea's office or Foster & Hicks', except this particular day.

Q. Then you were in Foster & Hicks' office? A. I was that day. My office is on El Dorado Street, and Lightstone Alley cuts on through.

Q. That would be the natural way for you to go from your office? A. It might be unless Mr. Johnson thought we could take a cocktail before we went.

Q. Had you taken a cocktail? A. I do not know whether we did or not.

Q. Didn't you, after you had gone to Foster & Hicks' real estate office, and from there into the Electrical Improvement office, see Mr. Edwards there? A. When Mr. Johnson and myself passed through the gas office we had to go to the extreme rear before we reached the office of the Electrical Improvement Company. Mr. Edwards was standing at the desk of the Electrical Improvement Company as we passed through, and I spoke to Mr. Edwards when we passed that place into the private office.

Q. What did you say to Mr. Edwards? A. "Good morning."

Q. Nothing else? A. Yes, I think I said "Good morning, Harry."

Q. Did you say to him, "Where is the Prince of California?" A. I might have said that—yes.

Q. Who did you refer to as the Prince of California? A. We call Mr. Rea the "Prince of California," and Mr. Edwards is the "King of Hawaii," and Mr. — is the "Duke of Santa Clara." Nearly all the people we speak of that way.

Q. Quite a titled community? A. Yes, it is quite a titled community, and quite a respectable one, too.

Q. What did Mr. Edwards say in response to that? A. I believe he used his usual phrase—he said, "Which way?" If you meet him ten times a day he will say "Which way?" Other people will say "Good day" or "Good morning."

Q. He said, "Which way?" A. Yes, that is the peculiarity of the man.

Q. What did you say to Mr. Rea when you went in? A. When I went into the private office? A. "Good morning, Mr. Rea, this is Assemblyman-elect Mr. Johnson."

Q. What else did you say? A. "Mr. Johnson wants to borrow one hundred dollars on this note, and is willing to sign a paper to stand in with the Commission," or something of that sort.

Q. Is that all you said? A. I believe that is all I said, except we shook hands, and Mr. Rea shook hands with Mr. Johnson and said, "Take a seat, gentlemen."

Q. You said, "Good morning, Mr. Rea, this is Assemblyman Johnson." A. I said "Assemblyman-elect Johnson."

Q. "He wants to borrow one hundred dollars of you?" A. "On this note."

Q. "It is indorsed by Mr. Slagts?" A. I do not think I made reference to that.

Q. "He wants to borrow a hundred dollars and is willing to vote for the Commission, and will sign a paper to that effect?" A. I said: "He is willing to sign a paper to stand by the Commission." That "vote for the Commission" is gratuitous on your part, sir.

Q. "He is willing to stand by the Commission;" what did you have reference to by "standing by the Commission?" A. I referred to it that he would come up here and stand by the Railroad Commissioners, because I looked upon it as being one of the most important bodies in this State and was standing up against the encroachment of the railroad. As a big fight was going on I thought it would be a good opportunity to find out where he stood. I spoke of the coming fight. I was fighting against the railroad company.

Q. But did you not say that Mr. Johnson told you you could say what you tell me now? A. I said what Mr. Johnson told me when he asked

me to make an appointment with him and Mr. Rea to meet in reference to having this note discounted. I then said to Mr. Johnson: "You know, Mr. Johnson, that Mr. Rea is President of the Railroad Commission, and he may expect something from you in reference to that. The Commission, likely, will be a matter before the Legislature;" which was noised all around in the newspapers and from mouth to mouth.

Q. Don't you believe that this railroad obligation of Mr. Johnson, which he was willing to assume for one hundred dollars, was the real consideration for that note? A. I had but one view in reference to the one hundred dollars, and that was that Mr. Johnson and myself had been friends, and we are to-day. We worked together in the campaign, and I assisted him materially in his election, and I think Mr. Johnson will agree with me that I was a very material element in that, and Mr. Johnson wanted this money. He had come to me as a friend and made a confidant of me, and when he suggested that I go to Mr. Rea, it was purely a business transaction. It was a negotiable piece of paper, and my only thought and intent was to secure for Mr. Johnson one hundred dollars.

Q. Was there anything which transpired between Mr. Johnson and Mr. Rea and yourself at that meeting—was there anything which transpired which showed that there was any different consideration? A. Yes; towards the latter end of it, when they began talking about men "standing up for the stuff," and all that sort of thing. I simply found that my occupation was gone, and I got up and went to the lounge.

Q. You simply collapsed? A. I did collapse. I think if you could have seen my face you would have thought I would have rather been out of there. I am not in that business.

Q. You were a Democrat, and supported the party? A. Always.

Q. And advocated the measures that were adopted by the County and State Conventions? A. Unflinchingly.

Q. You knew Mr. Rea was Republican? A. Yes.

Q. And you knew that the Democratic party believed that Mr. Rea, as a Republican, had not fulfilled his duties? A. I did not know such a thing.

Q. You knew that Mr. Johnson was a Democrat when you first spoke to him about the borrowing of this money, of course, and when you suggested to him that Mr. Rea would expect something from him, you knew Mr. Rea as a Republican would expect something from Mr. Johnson which Mr. Johnson would not give unless Mr. Johnson would get something for it? A. I did not. I would like to have counsel if I am on trial. I have stated had Mr. Johnson never urged me, never approached me, or never asked me to bring him to Mr. Rea, I never would have brought them in contact.

Q. Why did you say to Mr. Johnson, when he asked you if you had any relations with Mr. Rea, and you replied to him "I will go and see Mr. Rea about this matter, and if he will let you have this money he will expect you to vote for the Commission, or to stand by him," why did you say that? A. Now, Mr. McPike, I did not say what you asked me at all. And if you will allow me to repeat what I did say you will find they are entirely different phrases. I said that Mr. Johnson called upon me at my office and asked me what my relationship was with Mr. Rea. I told him good, and then he asked if I thought that Mr. Rea would discount this note for him. I said, "I did not know, but I will go

and see him. Mr. Rea, as you know, is the Chairman of the Railroad Commission, and if he does this for you he may expect something from you in return." That is my answer, and not as you have it.

Q. Mr. Barrington, was Mr. Rea not getting a promissory note, bearing interest, in return for that money? A. I would not have asked him to loan the money if I hadn't given him an equivalent.

Q. At any rate, expecting another equivalent, except a note bearing interest? A. When Mr. Johnson made that request of me about bringing him in contact with Mr. Rea for the purpose of getting Mr. Rea to discount this note, it struck me as being such a peculiar thing for Mr. Johnson to ask of Mr. Rea, that in my own mind I said, well, maybe he and Mr. Rea—Mr. Rea might discount this note for him and help him out of his trouble. But the idea of the political complexion, that Mr. Rea might expect something from him, did not occur to me—that Mr. Johnson might sell himself, or that Mr. Johnson would do anything that was not proper for a legislator to do—I had no such thought. I said "I will go and see him," and it was a sort of a dernier resort for Mr. Johnson. I thought I could help him. I would have gone to you if I saw you in San Francisco, and would ask you perhaps the same thing, if it was necessary.

Q. When you spoke to Mr. Rea, you said you met Mr. Rea on the street? A. I met Mr. Rea on the street.

Q. "Mr. Johnson wants to borrow one hundred dollars, and he will stand by your Commission?" A. Yes.

Q. And you used that language to him? A. He didn't say he would stand in with the Commission, but stand by the Commission.

Q. Had Mr. Johnson already told you? A. That is what I told him, and Mr. Johnson said in response to my question, "All right."

Q. What did you understand that you were conveying to Mr. Rea when you said "Mr. Johnson will stand by your Commission?" A. That possibly Mr. Johnson might know something that would be of benefit to Mr. Rea.

Q. You thought that he would learn it for the hundred dollars? A. I had no thought of the hundred dollars in that particular; many men have loaned money for less.

Q. What right had Mr. Rea to expect Mr. Johnson, when giving his note, indorsed by an indorser that you conceded was good, to expect—

[Objected to, as calling for the opinion of the witness.]

[Objection sustained.]

MR. BULLA: Mr. Barrington, you say that you had no thought whatever, when you arranged for this meeting between Mr. Rea and Mr. Johnson, that Mr. Johnson was going to do anything unbecoming a legislator, or that was wrong? A. I did not; I had no such thought, otherwise I wouldn't have gone with him.

Q. On the other hand, you said Mr. Rea would expect, or might expect, or may expect, as a condition for making this loan to him, that he would stand by the Commission? A. I said he might expect from him something; I said expect from him something.

Q. Did you not say he might expect something on behalf of the Commission? A. No, sir; that was a question with Rea.

Q. What do you mean by that? A. I told Mr. Rea he might possibly want him to do something for him; to give him some opinion.

Q. Did you not say when you told him Mr. Rea was Chairman of the

Railroad Commissioners, and if he let you have that money Rea might expect him to stand by the Railroad Commissioners? A. I said, "You must remember that Mr. Rea is Chairman of the Railroad Commission, and if he does this for you he might expect something in return."

Q. Did you use the word as an individual or by the Commission? A. I thought Mr. Johnson might tell Rea something.

Q. You have testified that you told Mr. Johnson that Mr. Rea, being the President of the Railroad Commissioners, might expect something for his accommodation for letting him have this money? A. No, sir; I didn't use all those words.

Q. And when you went to see Mr. Rea you simply told Mr. Rea? A. Yes.

Q. And you did not have any idea that Mr. Johnson would do anything wrong as a legislator? A. No, sir.

Q. Do you think it is right for a Democrat to do a service for a Republican where a matter is contested, for nothing? A. In the abstract I might say no, and I might say yes. I might want a favor, you might want a favor, and I might be opposed to you politically; but if you did me any favor, the proper thing with me would be to return it, and I might do it.

MR. CHAIRMAN: Did you not say that Mr. Johnson was ready to sign a contract to that effect? A. No, sir; I said sign a paper.

Q. Sign a paper to that effect? A. I did. That is what I said when I introduced Johnson to Rea.

Q. Was there a paper of that character in existence? A. I never saw one if there was. The only paper I saw was a paper Mr. Johnson signed with the Traffic Association.

MR. SHORTRIDGE: He agreed to vote in a certain way? A. He read one one night at a meeting in Santa Clara, and showed me the paper when he came on the stand.

MR. CHAIRMAN: Was that paper a circular letter of the Traffic Association? A. I think so; a pledge, and each man signed it. I didn't read it myself. Mr. Johnson read it to the meeting, and showed it to me; I think we were going out. I didn't read it; I know I told him I thought it was a shrewd move.

Q. There was no contract drawn up, to your knowledge, when you introduced him to Mr. Rea, that Mr. Johnson was willing to sign? A. No, sir; nothing. I never saw it.

MR. BULLA: Did you not think that it was rather an ungracious act on the part of Mr. Johnson for signing the Traffic Association pledge, and then to sign a paper for Mr. Rea? A. It was nothing uncommon. Many do. He might change his opinion over night. He might reject that pledge at any time and place. He was not sworn to it.

MR. McPIKE: You think a man has a right to change his opinions in all cases except in those where he has taken an oath? A. I think a man has a right to change his opinion in every case; and if he has taken an oath and finds out he has made a mistake, he has a right to be righted.

Q. If a man goes before a constituency and makes certain pledges, and if he is elected on them, has he a right to change them? A. He has a right to study the subject up, and I think it is his duty to correct them if he finds he is wrong.

Q. Had he not better resign? A. That is a matter with himself.

Q. Did you suggest to Mr. Johnson that probably Mr. Rea would consider that he had some strings on him if you loaned him a hundred dollars? A. I never suggested to Mr. Johnson that Mr. Rea would consider he had some strings on him.

Q. How many days before you went with Mr. Johnson to Rea's office that you arranged this meeting? A. I think, if I am not mistaken, about two days before.

Q. Not longer than that? A. It might have been three. I do not think more than three.

Q. What day of the week was it? A. Wednesday or Thursday.

Q. What day of the month? A. I could not tell you that, sir.

Q. Was it in November? A. No, I think the early part of December.

Q. Didn't you testify in your direct examination it was in the neighborhood of two or three weeks after election? A. No, sir; I said shortly after election. The election took place on the 8th. I could not say how long after the election. You asked me if I could tell; I couldn't tell how long.

Q. You never went any place except to Mr. Friant and Mr. Rea about this matter? A. I went to Mr. Friant and Mr. Rea.

Q. And it was a purely business transaction between you and Mr. Johnson in going to see Mr. Rea? A. Purely business, as far as I was concerned.

Q. And you believed, as far as Mr. Johnson was concerned, it was? A. Yes, when he asked me that question.

Q. All this conversation about United States Senator and politics was after Mr. Johnson and Mr. Rea ceased to talk about the note? A. A portion before, and a portion afterwards.

Q. At what period of your visit was it that Mr. Rea handed the note back to Johnson? A. That was shortly after they began talking about the Commission, and one thing and another. I think Mr. Rea, when I questioned him the second time; it might have been five minutes, probably three minutes, when Mr. Rea said, "Major Barrington," he said, "I don't care anything for the note or its indorsement." He said, "Mr. Johnson and myself understand each other. Mr. MacKenzie has spoken of you, Mr. Johnson, to me;" and he said, "The fact is, you want one hundred dollars," or cold-blooded fact; "The cold-blooded fact is, you want a hundred dollars," and they then went into conversation, which I have related.

Q. Did Mr. Rea ever make a proposition to Mr. Johnson, that if Mr. Johnson would stand by the Commission he would pay Johnson one hundred dollars? A. No, sir; I did not hear it.

Q. Did he; could he have made that proposition without you hearing it? A. They might have talked lower; if they did I did not hear it.

Q. Did Mr. Rea speak in a very loud tone of voice all the time you were there? A. He spoke in the same tone. I heard everything between them.

Q. There was no apparent effort to speak loud? A. No; he spoke in an ordinary tone of voice.

Q. Isn't it a fact that he raised his voice to a high pitch? A. I am not accustomed to Mr. Rea's voice in a room. I do not know whether he spoke louder than usual. I suppose he spoke loud enough. I suppose he talked as we are now.

Q. What were the words stated, or the things that took place which

caused you to go aside, and as you say, apologize to Mr. Rea? A. Well, when I found that the conversation between Mr. Johnson and Mr. Rea was drifting from the subject of the note into the question as to whether Democrats or other people would stand in for a Republican Senator, I found that the question had gone outside the limits that I had started upon.

Q. Did Mr. Rea ask whether or not any persons that he named were purchasable? A. Mr. Rea said, "I suppose they are all out for the stuff."

Q. Did he say that with a smile? A. Yes.

Q. Did you take it that it was anything more than a mere passing remark, or did Mr. Rea look like business? A. No; I do not think that he did. He was smiling and answered the question, that is all.

Q. Then it was the words "I suppose they are out for the stuff" and the smile on both Mr. Johnson and Mr. Rea which caused you to go out and apologize? A. No, sir; that is not all; they were talking.

Q. What did Rea say and what did Johnson say? A. He said, "Yes."

Q. Then it was the smile on both countenances, the expression by Mr. Rea, "They are out for the stuff," and the word "Yes," that caused you to go out and apologize? A. It didn't cause me to go out and apologize. It caused me to believe that I was not wanted there, and after I saw the whole thing had got through I asked Mr. Rea to come out.

Q. What was the whole thing? A. The whole conversation.

Q. Now tell everything that Rea said and everything that Johnson said and everything you said. What did Rea say? A. In reference to what?

Q. Anything—in reference to that matter. I want you to start in at the time Mr. Rea and Mr. Johnson said something that caused you to go outside and apologize. A. A short time after the election Mr. Johnson came to my office, and said that he wanted—

Q. After you had apologized to Mr. Rea for bringing Mr. Johnson there, you went away with Mr. Johnson? A. Yes; we left the office together.

Q. You were willing to consort with him after that? A. I went out of the office with him, yes.

Q. And talked to him? A. We stayed together probably half a minute.

Q. Did you tell him you had apologized to Rea? A. I did not.

Q. Did you ever see Mr. Johnson afterwards? A. Yes, a couple of days—probably a week or ten days after.

Q. Why did you apologize? A. Well, because I did not want Mr. Rea to think that I was mixed up in such a thing as the conversation developed into. I wanted him to know I came there to have the note discounted, and nothing more.

Q. It developed into a corrupt conversation? A. No, sir; I did not say that. It developed into something that was not right. I did not want it said that a man I had supported should talk any such talk as that.

MR. BLEDSOE: Yet you had advised this very man that you did not like to hear talk that way? A. I did not advise him.

Q. Didn't you suggest to him that Mr. Rea might expect him to do something? A. I said Mr. Rea might expect; I didn't advise.

Q. Yet when that developed into a fact it shocked you so you left the room? A. No, sir; I take a different view from that entirely.

MR. MCPHIE: If you let us know what you did and said, the committee can find the facts? A. I told you what my language was and what Rea's language was.

Q. After you found out that he was that kind of a man? A. I did not say that.

Q. You inferred that they were bordering on a corrupt conversation? A. They were bordering onto a conversation that I did not think was proper.

Q. An improper conversation? A. I think so.

Q. And after that you went away with Mr. Johnson, and after the Legislature convened you sent a bill here and asked him to introduce it? A. Certainly, being a representative from our district.

Q. Did you think he was misrepresenting your district? A. I do not know what he did with Mr. Rea.

Q. Was there another gentleman from Santa Clara, a representative? A. Yes.

Q. Did you support him? A. Politically?

Q. Yes. A. No, sir; I did not.

Q. Why didn't you send the amendment to him? A. I didn't know him, only by reputation.

Q. Yet you knew that Mr. Johnson was a man that was out for the stuff, and had given you evidence of it in Mr. Rea's office, and you apologized to Mr. Rea, and still you had confidence enough in him to send a bill to him to be introduced in the Legislature? A. I did.

Q. Are you still friendly? A. Yes.

Q. Didn't you testify that you and Mr. Johnson are friendly? A. If he run again I would support him.

Q. Why did you apologize to Mr. Rea for one of your friends? A. Simply because I thought Mr. Johnson—

Q. Why didn't you admonish Mr. Johnson? A. I had no business to. I wanted to get the money.

Q. Did you go to any other bank? A. I did not.

Q. Do you know whether Mr. Johnson got it? A. He told me he got it, but he didn't tell me whether he got it at the bank or where.

Q. Who did most of the talking, Mr. Johnson or yourself? A. I don't think I did much talking after I presented the note.

Q. Mr. Johnson did most of the talking? A. Mr. Johnson and Mr. Rea had most of the conversation, except the preparatory part of it.

Q. The preparatory part of it; did you do the most of that? A. I presented Johnson, and presented the note.

Q. If Mr. Rea swears that you did most of the talking, and Mr. Johnson had very little to say, then he swears to what is not true? A. I do not know what he swears to. If Mr. Rea says that the greater portion of the entire conversation was conducted by me, Mr. Rea is mistaken.

Q. If Mr. Rea swore that the greater part of it was conducted by you, and not by Johnson, he was mistaken? A. Yes.

Q. Did Mr. Rea say anything about the Traffic Association to Mr. Johnson? A. Yes.

Q. Anything about Mr. Leeds? A. Yes; they had a conversation. I cannot recollect the exact words, but he told him something in reference to Mr. Leeds—the idea of a local settlement of the traffic business, that he agreed with him. And he explained to him the attitude of the case before the Commission.

Q. This card here? A. Mr. Johnson gave it to me in my office.

Q. What for? A. Because I wanted it. He had it in his hand, and I asked him to give it to me. It had the names of all the members, and I did not have them.

Q. Did you examine it at that time? A. I stuck it in my pocket. I do not think I did more than just take and fold it up and put it in my pocket.

Q. Did you read any of the names? A. I did not, sir.

Q. Do you know whether any of those pencil marks were on that card at the time Mr. Johnson handed it to you? A. I cannot state that; I didn't look at it enough. I took it in my hand and folded it up and put it in my pocket.

Q. Was it after you quit discussing with Mr. Johnson that he began to talk about this card to Mr. Rea? A. It was before that. He was talking about United States Senator.

Q. That did not interest you? A. I did not know but what Mr. Rea wanted to find out Mr. Johnson's views.

Q. They talked about a Republican Senator? A. Yes.

Q. Didn't you testify awhile ago they were having a talk about the Senator—a Republican—how to vote? A. Yes; they talked about a Republican, and they talked about White and Foote, which was entirely a different matter.

Q. Was it when they talked about White and Foote that this card was marked? A. It was after that, when they talked about how he would stand on the Republican Senator.

Q. That is what disgusted you? A. Yes; that is what made me feel that something was going on.

Q. And it was after that when you gave him the card, and gave him the pencil to mark? A. It was when they got to talking about a Republican Senator, and he asked Mr. Johnson to write the names of the different parties.

Q. That is what disgusted you? A. Mr. Johnson said, "I have a card in my pocket," and didn't have it; and he said, "Major, I gave you one this morning," and I took it out and handed it to him.

Q. And after that conversation occurred it disgusted you to such an extent that you went out and apologized, after you took your card out of your pocket and gave it to him. A. I didn't say that.

Q. But you collapsed on the sofa? A. I did.

Q. Did Mr. Rea make any excuse for not giving him the money then? A. Yes, Mr. Rea said, "I am short myself; I have just paid my taxes, and I am compelled to borrow money myself."

Q. What did Mr. Rea say to you the day before, or two or three days before, when you made an appointment and said Mr. Johnson wanted to borrow a hundred dollars? A. He said, "Meet me at eleven o'clock to-morrow." He was talking to some friends and he left me. I don't suppose the conversation between Rea and myself took half a minute.

Q. He got immediately interested when you told him he would get a vote from Mr. Johnson? A. On that day?

Q. Yes. A. I didn't tell him he would get a vote from Mr. Johnson, and have not sworn to it.

Q. Why didn't Mr. Rea tell you then he was hard up, and had taxes to pay? A. I do not know, sir.

Q. You do not know why he deceived you by having you come up to the office? A. I do not think it was a question of deceiving.

Q. Who owns the "Democrat?" A. I do.

Q. When did you obtain it? A. I obtained it by starting it.

Q. What is its circulation. A. The circulation now is six hundred.

Q. Supported by subscription and its ads. Did any one give you any money to come here on? A. No, sir.

Q. Did you borrow any money here? A. I did not. I borrowed from my own slender capital, that I ought to use myself, and I ought to be there on business.

Q. Have you conversed with Mr. Rea about this case since he went off of the stand last night? A. The only time in your presence, and I believe you did one half of the talking, except the time when we talked about Hawaii.

Q. Have you conversed with any one who heard the testimony last evening? A. Before the committee?

Q. Yes. A. I do not know.

Q. Have you talked with anybody about this case? A. I have talked with Mr. Richards and Mr. Shortridge.

Q. Counsel and witness in the case? A. Yes.

Q. Did he tell you what had been sworn to? A. Mr. Richards?

Q. Yes. A. He did not.

Q. Did you ask him? A. I did not.

Q. Did you read the "Examiner" to-day. A. I read both the "Examiner" and "Chronicle."

Q. And read the proceedings before the committee last night? A. I did; yes.

Q. And had your memory refreshed from them? A. I did not. I was astonished to find that the item was made up with my own name.

Q. Did you ever ask Mr. Johnson to go to Mr. Rea's office? A. I did not. I never asked him to go there in my life.

Q. Did you ever ask him whether he had obtained the money from Rea? A. I asked him whether he had got the money on the note, and he told me no.

Q. Do you know Mr. A. N. Smith? A. I know Mr. Smith who was Captain of the Willow Glen Club?

Q. Yes; Mr. A. N. Smith. Did Mr. Slagts ever call at your office to see you about Mr. A. N. Smith, and when did you meet him with reference to Mr. Smith? A. I think Mr. Slagts has been at my office at one time.

Q. Did he call there after the 14th of December to see you about Mr. A. N. Smith? A. I cannot remember that. I do not think he did; I could not say.

Q. Your answer is, that you do not remember? A. I do not remember.

Q. Did Mr. Slagts then and there ask you why you did not get that money for Johnson, and did you reply to him as follows: "Of course if Rea let him have the money he would expect Johnson to stand in with him, but as Johnson did not talk favorable, he would not loan it to him?" A. No, sir.

Q. You swear that that did not take place? A. I never made that remark.

Q. I am asking if that conversation took place between you and

Slagts at your office, in Santa Clara, on or about the 14th of December?
A. Such conversation as you have repeated?

Q. Yes. A. No, sir.

Q. I will ask you if in Santa Clara County, two or three days after that, did Mr. Slagts ask, or did you ask Mr. Slagts, when you saw him passing by your office, "Where is Mr. Johnson?" and did he reply, "He has gone to the city." Did you then say to him "Where did he get the money," and then Slagts said "I got it for him," and did you not then say "Johnson ought to have paid me that eight dollars first?" A. Yes; I had some such conversation as that on the street with Mr. Slagts. I think I said, that as hard as I worked for him, he ought to come and pay my bill.

Q. Did you see Mr. Slagts Saturday night last, on the corner of Santa Clara and First Streets? A. Yes.

Q. And have a conversation with him? A. We stood together for five or ten minutes.

Q. You had a conversation? A. Yes; I asked him where he had been. I hadn't seen him for some time, and shook hands, and he said he had been up in the country some place, or rather cutting wood, and while there a gentleman came along, and he came back to town again; the gentleman talked business with me.

Q. Did you converse about this case with Mr. Slagts? A. Mr. Slagts and myself talked about it, and he said all we could do was to tell the truth. I said "That is all we can do," and then we talked about this note, and then Mr. Slagts said he remembered the note was in my handwriting, and that Mr. Johnson had indorsed it and he indorsed it, and he told me that Mr. Johnson had got the money at the Commercial Bank.

Q. Did you ask him what Mr. Johnson meant by "a go-between between him and Rea," and did you then and there state that there was no go-between, it was "simply a business transaction, and Jim Rea cannot prove anything by me?" A. That conversation took place in part and not in part. I asked Mr. Slagts. He told me he had not seen Johnson. I asked him what Johnson meant by imputing there was a go-between between him and Mr. Rea? And he said Johnson is very funny. I didn't understand Mr. Johnson to accuse me of being such a thing as that, and Mr. Slagts said I do not know.

Q. Did you say it was simply a plain business transaction? A. I said I went down to Mr. Rea with Mr. Johnson, at Mr. Johnson's request, on a plain business transaction, to borrow money on a hundred-dollar note—that is what I said.

Q. Did you say, also, that Jim Rea could not prove anything? A. I do not remember it.

Q. Did you say that Jim Rea could not prove anything "but a business transaction by me?" A. I said that it was simply a business transaction, and Mr. Rea could not prove anything else. If Mr. Johnson had subpoenaed me I would have told the same thing I have told to-night.

MR. BULLA: Has Mr. Johnson paid up all the money he owes you? A. Yes, and no; we met after, some time before he came up here to attend to his duties, and we went over certain dealings about my paying him a portion of a certain amount of expense of the club of Santa Clara—of a two dollars and eighty-five cents for my uniform for the club,

which Mr. Johnson deducted from the bill, and there is a balance of two or three dollars due me. I never pushed Mr. Johnson for it.

MR. McPIKE: What is your birthplace? A. Pennsylvania.

Q. What is your age? A. Forty-seven—I will be my next birthday.

Q. And you have resided how long in California? A. I have been in California since the 14th day of November, 1888. I came up here from cruising on the South Pacific squadron on the "Vandalia."

MR. BLEDSOE: Mr. Barrington, you say that you are fighting Mr. Rea all the time? A. Politically, yes.

Q. In your paper? A. Through my paper, yes.

Q. On what grounds were you fighting him? A. On the ground I fought the railroad, and on the ground that he was a Republican.

Q. You say, also, that you consider the railroad company one of the most important bodies of the State? A. I think from my reading instructions from the present report of Mr. Shively I do, on the ground that it is a check to the railroad.

Q. Was you fighting against Mr. Rea on the ground of the position he had taken as a member of the Railroad Commission? A. No, sir; on the general principle of being a Republican.

Q. You run a straight out Democratic paper, do you? A. It is considered so.

Q. What kind of a fight do you make against a man; do you make a very bitter fight? A. I do not think I make a bitter fight; I am naturally born sarcastic—I make a sarcastic fight.

Q. You are well acquainted with Mr. Rea's characteristics—thought, temperament, and actions? A. Yes; I knew Mr. Rea as an active and aggressive man.

Q. He is not apt to treat with particular favor a man that fights him? A. How do you mean? Professionally and politically?

Q. Any way? A. I think politically, Mr. Rea looks upon it as business.

Q. Take it personally, is he apt to treat a man personally with favor that has personally antagonized him? A. That is hard to answer.

Q. Could not you give an opinion as to Mr. Rea from what you know of his characteristics—is he a man that is in the habit of treating with favor a man who has fought him? A. I could not answer that, yes or no. Mr. Rea is a man of very peculiar temperament. He is liberal in his likes and hatred; if he likes a man, although a man is opposed to him personally, he might overlook it.

Q. What portion of Mr. Rea's record did you attack? A. None but only as a Republican. When I first came to San José I was told that he was the boss of the town, and then I knew a man who was fighting him, and I picked up the fight.

Q. Are Democratic politicians of San José, to your knowledge, in the habit of going to Mr. Rea for favors? A. I do not know anything about that, sir. I never went to him for favors personally.

Q. Why did you not apologize to Mr. Rea right there in the presence of Mr. Johnson? A. Because I did not want to subject Mr. Johnson in such language. Because I did not want to.

Q. You say that you thought he might be getting himself into a scrape. Did you advise him when you went out about it, did you caution him then? A. The very moment he told me that he had known Mr. Rea since he was knee high, I simply bid him good morning.

Q. You have stated that the marking of the names on the card was in connection with the talk about Republican United States Senator? A. That is my recollection.

Q. Are you as positive of that point as any other point you have testified to? A. When it comes to that, I said to the best of my recollection, because the two conversations were considerably mixed—jumped from one to the other.

Q. And notwithstanding the fact that you were fighting Rea all this time you meet him friendly on the street? A. I would meet him to-night the same.

Q. Are you called friends in Santa Clara? A. Yes; if I met him to-night I would shake hands and pass the time of day, as with any other gentleman. I have no personal antagonism to him.

Q. Did you ever know him to act the same to any other man as to you? A. Yes; I know of several instances.

Q. When that conversation was going on between Mr. Johnson and Mr. Rea, was there anybody else in the room? A. Mr. Edwards passed through the room; he did not remain. He went in a little door-way, as this would be the entering door, lying between the desk and the table, and he passed through a kind of angling, and passed one door and went out.

Q. And you had no thought when you went there that Mr. Johnson would be called up to do anything that he should not do? A. I had no thought that anything would occur that did occur. No, sir.

MR. SHORTRIDGE: When you went out to apologize to Mr. Rea, as you say, was Mr. Edwards standing there in that portion of the room? A. He was standing in a sort of a room—a supply room. I do not know what they call the room.

MR. BLEDSOE: You have testified that when you met Rea on the street when you made the appointment with him, that you told him that you thought Mr. Johnson would be all right with the boys, meaning the Railroad Commissioners; now, the question is, What do you mean by "all right?" A. I meant that I did not think that Mr. Johnson was unfriendly to the Commission.

Q. Did you think that he would be friendly in retaining the Commission in place? A. I did not think he would take any dishonest way of doing so.

Q. Didn't you know that he had pledged himself to the Traffic Association to abolish the Commission? A. Yes.

MR. MCPIKE: Did that conversation between you and Mr. Rea, about Mr. Johnson, about making the appointment, take place in November or December? A. Well, now, Mr. McPike, that is a question I cannot exactly answer; I could not tell; I did not charge myself with it.

Q. How long after election was it? A. It might have been a couple of weeks, or a little longer.

Q. It was only two weeks after election; it was in November? A. I could not say.

Q. Was it three weeks? A. I couldn't say that.

Q. Why did you attempt to state it on your direct examination? A. I said I met him about the first week of December. I said our meeting was about the first week in December.

Q. What was the date you went to Rea's office? A. I couldn't tell you the date.

Q. Was it before the holidays or after? A. Before the Christmas holidays?

Q. Yes. A. It was before the Christmas holidays. I have tried to remember that by trying to find out the time the note was discounted at the bank, but I could not do it.

Q. Was it before the 1st of December? A. I think it was afterwards. I think it was early in December.

Q. What day of the week was it? A. At the time we were there, Thursday.

Q. Was that the 1st of December? A. I could not say that. I know Mr. Rea told me he was going to San Francisco, going away the next day; that is why he made it Saturday.

Q. When Mr. Edwards came in there, what was the particular language that was taking place between you and Mr. Rea, or between Mr. Johnson and Mr. Rea, or between Mr. Johnson and yourself? A. I couldn't say. I think probably that Mr. Edwards passed in two or three minutes after we went in, I think at the time Mr. Rea was handing the note back.

Q. And Mr. Rea was saying something about solvency? A. Mr. Rea was just stating he didn't care for the note or indorser.

Q. Didn't you say you didn't care whether they were solvent or not? A. Not to my recollection. My recollection is, "I do not care for the note or the indorsement."

Q. Didn't he say, I do not care whether solvent or not? A. I do not think he did—not to my recollection.

Q. Do you remember anything about it? A. What I have told you I do.

Q. Did you not read what Mr. Rea said in the paper? A. I did, but I never take newspaper reports as being correct.

Q. Are you a newspaper man? A. Yes, and that is the reason I say that.

MR. BLEDSOE: If the newspaper this morning stated that some of those names were signed on the account of the Railroad Commissioners it would not be true, would it? A. Well, I do not think I would swear by it. I wouldn't take a report that goes through the telegraph.

ARCHIE A. TISDALL.

Called and sworn, testified as follows:

MR. SHORTRIDGE: Where do you reside? A. In San José.

Q. What is your business and where are you engaged? A. I am working for the Electrical Improvement Company.

Q. Where is their office? A. Their office is in San José.

Q. What portion and where in San José? A. It is on Santa Clara Street.

Q. Do you know a gentleman named H. H. Johnson? A. I do, sir.

Q. Did you ever see him in the office of the Electrical Improvement Company? A. Yes.

Q. How many times? A. I saw him there several times.

Q. What did he say when he came in, if anything? A. Inquired for Mr. Rea.

Q. About when was this? A. The first time I saw him in there was about the last part of November.

Q. After the election, was it? A. Yes.

Q. And when he was elected Assemblyman? A. Yes.

Q. How many times do you think you saw him there? A. I could not say positively; I saw him there several times.

Q. Several times; two, or three, or four, or what? A. Two or three times.

Q. Was Mr. Rea in there at any time when he called? A. Yes; he was there once that I know of.

Q. State the circumstances. A. Mr. Johnson came in there and asked me for Mr. Rea; and Mr. Rea was in the private office, and I knocked on the door, and Mr. Rea came to the door. And I told him a gentleman wanted to see him; and he opened the door to see who the gentleman was, and he said he was busy. I told Mr. Johnson, and he took a seat in the chair and waited for awhile.

Q. How long did he wait for Mr. Rea? A. I guess twenty minutes, or half an hour.

Q. Did Mr. Rea come out and engage in conversation with him? A. No, sir.

Q. Where did he go, if you know? A. He went out the back way; I do not know where he went.

Q. Did you see him at the office subsequent to this time, the last time you have mentioned? A. Yes.

Q. What occasion? A. I saw him there once or twice after that.

Q. Inquiring for Mr. Rea? A. Yes.

Q. He inquired for Mr. Rea, did he? A. Yes.

Cross-Examination.

MR. MCPIKE: You have stated "several times." What do you mean by several? A. Two or three times.

Q. Was it two times or three times? A. That I could not say; I do not know.

Q. You do not know whether twice or three times? A. No, sir.

Q. How much time elapsed between the first visit and the second? A. Well, I do not know that.

Q. Was it a day? A. It was more than a day.

Q. What day of the week did he call the first time? A. I do not remember.

Q. What day of the week did he call the second time? A. I do not remember.

Q. Who else called to see Mr. Rea during these times? A. I do not remember.

Q. What was there particular about Mr. Johnson calling there that should attract your attention—that you should recollect him and not other people? A. I inquired who he was.

Q. You did not know Mr. Johnson? A. No, sir.

Q. Who did you inquire of? A. Mr. Bethell.

Q. Was Mr. Bethell there? A. He was coming in and Mr. Johnson was going out.

Q. Was that the first or second time? A. The second time.

Q. You had never met Mr. Johnson before? A. No, sir.

Q. Any one else call there you did not know? A. Yes.

Q. Who? A. Lots of people call there every day.

Q. Do you always ask who they are? A. No, sir; I never do.

Q. Why did you ask in the case of Mr. Johnson who he was? A. I do not know; I just happened to ask Mr. Bethell.

Q. Do you ask about anybody else? A. I have often; not every time.

Q. Who during this time? A. That I do not remember.

Q. Nobody? A. No, sir.

Q. What was there particular about your simply asking Mr. Bethell who he was that caused you to recollect it? A. From his appearance.

Q. How did he appear? A. Well, he didn't appear like a man—like men that come in there looking for Mr. Rea.

Q. Was he better dressed than men that usually come? A. No, sir.

Q. Poorer? A. Yes.

Q. What kind of clothes did he have on when he first came there? A. I do not remember.

Q. What was there about his clothes that struck you as peculiar? A. His shoes.

Q. What kind of shoes were they? A. Shoes like everybody else wears.

Q. They were shoes like everybody else wears and so peculiar that you asked who he was? A. Yes.

MR. BLEDSOE: Have you seen Mr. Johnson since that time? A. Yes.

MR. MCPIKE: You know him now, do you? A. Yes.

Q. Have you looked at his shoes lately? A. No, sir.

Q. Do you know whether they were similar to the ones he wore on that day or not? A. No, sir.

Q. Afterwards, did you look at his shoes? A. No, sir.

Q. Why did you look at his shoes on that day? A. I do not know; I just happened to look over that way.

Q. What was there about his shoes that was was peculiar? A. Well, they looked like shoes that had never been blackened.

Q. And because you saw a pair of shoes that looked as though they had never been blackened, you thought it necessary to ask Mr. Bethell who it was? A. No, sir.

Q. Then it was not because they were not blackened? A. I just happened to ask him, that is all.

Q. You asked him on account of his shoes you testified a moment ago? A. I passed that remark and asked him.

Q. And it was because his shoes were not blackened? A. No, sir; it was not.

Q. What was there about his shoes? A. I do not know; I just happened to ask him.

Q. What was there about his shoes that caused you to ask Mr. Bethell who it was? A. I do not know; I just simply asked him who that gentleman was.

Q. Is Mr. Rea engaged in the Improvement Company? A. Yes.

Q. He is your employer? A. Yes.

Q. How long have you been in his employ? A. About a year and a half.

Q. He pays you a salary? A. Yes.

Q. He pays you a salary now? A. Yes.

- Q. How long a time elapsed between the first and second visits? A. I do not remember.
- Q. One day? A. I could not say.
- Q. Two days? A. I couldn't say exactly.
- Q. Was it November or December? A. The first one was in the last part of November and the second one in December.
- Q. What time in December? A. The first part, I think.
- Q. About when? A. I cannot say.
- Q. What day in November did he call the first time? A. I do not know the day.
- Q. How do you know it was in November? A. I know it was the last of November, because I was making out the bills for the first of the month.
- Q. When he called? A. Yes.
- Q. Is that the reason you know? A. Yes.
- Q. How long before the first of December did you commence making up your bills? A. Sometimes I begin about the 28th.
- Q. When did you begin on this occasion? A. I do not remember the date.
- Q. Then you do not know, do you? A. No, sir.
- Q. Then you do know it was in November that he called the first time? A. Yes; I know it was in November, but I do not know the exact date.
- Q. And you do not know whether one, two, or three days afterwards that he called the second time. A. No, sir.
- Q. When did he call the third time. A. I did not see him the third time.
- Q. You did not? A. No, sir.

T. C. BETHELL.

Called and sworn, testified as follows:

- MR. SHORTRIDGE: Your name is Thomas C. Bethell? A. Yes.
- Q. Where do you reside? A. San José.
- Q. What is your business? A. I am bookkeeper and cashier.
- Q. By whom are you employed? A. By the Electrical Improvement Company, San José.
- Q. Do you know a gentleman named H. H. Johnson? A. I do not; I have seen him.
- Q. You mean by that you do not know him personally? A. Personally; no, sir.
- Q. Did you ever see him in the office of the Electrical Improvement Company? A. Yes.
- Q. About when was the first time, you can remember, that you saw him there? A. About the middle of November.
- Q. If you can recollect, how many times, or about how many times, did you see him in that office? A. I should judge eight or ten times.
- Q. What did he say, if anything, when he would come to the office? A. He generally asked for Mr. Rea when he came in.
- Q. Desired to see Mr. Rea? A. Yes.
- Q. How long did he remain in the office? A. He would generally

come in about half-past ten or eleven, and Mr. Rea was always expected in the office between ten and twelve. I would tell him Mr. Rea was not in, but would be in most any time; and he said he would sit down in the office in an outside chair and wait.

Q. Did Mr. Johnson ever remain in the office while you went out to hunt Mr. Rea? A. On one occasion, yes.

Q. State the circumstance? A. One afternoon about—I generally get back from lunch at one o'clock, and so at a quarter past one as I came in the office, and opening the swinging door Mr. MacKenzie and Mr. Johnson came out of the back office; one of the two gentlemen, I do not know which it was, asked me whether Mr. Rea had been in. I said, "No, he has not been here, but I just left him."

Q. What did you do, if anything, in relation to the matter? A. They asked me if I could find him. I said, "Yes, I think I can." They said, "All right; tell him Mr. Assemblyman Johnson is here waiting to see him." I went back to the Commercial Savings Bank, where I had left him.

Q. How far is that from the office? A. About half a block. And I caught Mr. Rea, he was talking to Hon. D. B. Moffitt; and I called him to one side, and I said, "Mr. Rea——"

Q. You informed him that Mr. Johnson wanted to see him? A. I called him to one side and said that Assemblyman Johnson wanted to see him.

Q. Did Mr. Rea return with you to see Mr. Johnson? A. No, sir.

Q. What did he do, sir?

[Objected to, and objection sustained.]

Q. Did you ever see him there after that, I mean Mr. Johnson? A. After this time I went to the bank?

Q. Yes. A. Yes.

Q. What occasion was it? A. On one occasion when he and Major Barrington were in the outside office.

Q. What time of day was it? A. Between eleven and twelve o'clock, I should judge. I do not remember exactly. I remember the occasion, but not the hour.

Q. Where did Barrington and Johnson go after passing or entering? A. Mr. Rea entered first, and they went through into the back private office—the two of them together—the three, I should say.

Q. Who was present in the office at the time? A. Mr. Richards was there, and I think the collector was; I am not sure.

Q. Who do you mean by the collector? A. Mr. Tisdall, the gentleman who has just testified.

Q. Who else? A. Nobody else. When they went through to the back office Mr. Edwards entered right after them.

Q. Entered the private office? A. No, sir; the public, at least he came in the public office just as they were going into the private office.

Q. How long did they remain in there? A. Three quarters of an hour, maybe an hour, something like that; they were in quite awhile.

Q. Were you there when they came out? A. Yes.

Q. Did you see him there subsequently to that time? A. Yes.

Q. What occasion? A. He would come in once or twice and would ask for Mr. Rea.

Q. After this meeting? A. Yes, after this meeting.

Q. And ask for Mr. Rea? A. Yes.

Q. Was Mr. Rea in at any time when he came subsequently? A. No, sir. If he had been in I would have told him the same thing. There are lots of times he was very busy, and I would tell him he was not in.

Q. Why did you state that; you say that you would not have told him if Mr. Rea had been in? A. Because Mr. Rea told me that he didn't want him there, and he didn't want to see him.

Cross-Examination.

MR. MCPIKE: You say that you were there when the three—at the time Mr. Johnson and Mr. Barrington came in? A. No, sir; they were there.

Q. They were there? A. Yes, I was there at that time.

Q. And saw them go there into the back office? A. Yes.

Q. And Mr. Rea had just gone in ahead of them? A. Yes.

Q. You are positive of that? A. Yes.

Q. You swear to that positively? A. Yes. That Mr. Rea went into the office before these gentlemen, and he told them to come in.

Q. Is it not a fact that Mr. Rea did not come in until about two minutes after they had been there? A. I do not think so.

Q. You swear to that positively? A. The best of my recollection, yes.

Q. And your recollection as to the rest of the matter is about the same as that? A. Mr. Rea invited them in.

Q. You recollect Mr. Rea inviting them in; was there when they came there? A. No, sir; they were there first. They were waiting for Mr. Rea.

Q. Why did you say Mr. Rea was there and invited them in? A. After he walked into the back office.

Q. Was he in the back office when they came in? A. No, sir; he came in and—

Q. Came in where? A. Into the office. There is an outside office and an inside office—outside of the counter.

MR. CHAIRMAN: I understand you to say that the two gentlemen were in the outside office? A. Yes.

Q. When Mr. Rea came in and invited them into the inner office? A. Yes.

MR. MCPIKE: Came in from where? A. From the street into the main office. They were outside of the counter. There is a little door between the outside of the main office and the inside.

Q. You say you are bookkeeper and cashier? A. Yes.

Q. How long have you been such for this company? A. Just three years and three or four months.

Q. Mr. Rea is your employer? A. He is the Vice-President, and I work for the company.

Q. You consider him one of your employers? A. Yes.

Q. When was the first time you saw Johnson in the office? A. Along about the middle of November.

Q. About the 15th? A. Somewhere along there.

Q. When was the second time? A. A few days afterward.

Q. He came there a few days afterwards—how many days? A. Did he come in?

Q. Yes. A. I should judge he came in there six or eight times—about eight times.

Q. Then the second time that he called— A. I should judge seven times.

Q. How many days elapsed from the time that you first saw Mr. Johnson there, which you say was about the 15th of November, until he came the second time? A. I do not know, sir.

Q. How many days elapsed from the second time to the third time? A. I do not know.

Q. How many from the third to the fourth? A. I do not know.

Q. How many to the fifth? A. I did not keep track of the days he was there or the time.

Q. You did not? A. No, sir.

Q. Why did you testify it was eight or ten times? A. I saw him in there.

Q. Did you see him there eight times? A. I should judge so.

Q. Why should you judge? A. I should judge so.

Q. You should judge he was there eight times—did you see him there eight times? A. I didn't put down all the days he would come in there and ask for Mr. Rea.

Q. When was the last time he was in there? A. I should judge along about the first of December. I should judge the 8th or 10th, somewhere along there into December the last time; that is my recollection.

Q. Why do you think it was the 8th or 10th? A. I know it was shortly after Mr. Rea had been in there.

Q. Been in where? A. In the office. I generally have my check signed by him.

Q. He was not there every day? A. No, sir.

Q. What days was he there? A. I do not know just when I can find him.

Q. Why do you associate Mr. Rea being in the office with the 8th or 10th? A. Because I pay the men on the 5th and 8th.

Q. Was Mr. Johnson there on pay day? A. Somewhere along there. He didn't draw any salary from us. I was not paying him anything. I cannot recollect whether it was on pay day or not.

Q. Why do you say he was there on the 8th or 10th? A. Because I told Mr. Rea, when Mr. Rea was in, that Mr. Johnson was looking for him.

Q. You know he was there on the 8th or 10th, because you generally told Mr. Rea that Johnson was in there looking for him? A. Yes.

Q. Is that the only reason? A. No, sir; because he generally signs checks.

Q. Did he sign a check on the 8th? A. No, sir; I think it was the 7th.

Q. What day of the week was the 7th? A. I do not know.

Q. Was it Sunday? A. I do not know.

Q. Did he sign a check on the 7th? A. I do not know.

Q. Will you swear to it? A. No.

Q. Will you swear he signed one on the 8th? A. No; the 6th, 7th, or 8th.

Q. It was the 6th, 7th or 8th? A. Somewhere along pay day.

Q. The 5th is pay day? A. The 5th, 6th, or 7th, anywhere along there, as convenient.

Q. Why do you associate pay day with Mr. Johnson's visit; is Mr. Rea never there except on pay day? A. No, sir.

Q. Was Mr. Tisdall always in the office when Mr. Johnson called? A. I don't know about that.

Q. Did Mr. Tisdall ever say anything to you about Mr. Johnson? A. Yes.

Q. When was that—the first visit? A. I do not remember.

Q. Was it the second visit? A. I do not remember.

Q. Was it the last visit? A. No, sir; it was before the last visit.

Q. What visit was it? A. I do not remember.

Q. What did he say? A. He asked me who he was.

Q. Did you tell him? A. Yes.

Q. Who introduced you to Mr. Johnson? A. Nobody; I was never introduced to Mr. Johnson.

Q. When did you first know him? A. During the campaign he was pointed out to me.

Q. And the first time he called there and asked for Mr. Rea, you knew him as Mr. Johnson? A. Yes, the first time.

Q. And the second and third times? A. Yes; of course I knew him subsequently. I knew him right after election, and during the campaign I saw him.

MR. SHORTTRIDGE: You supported him, did you not? A. Yes; I am a Democrat, and I supported the Democratic ticket.

Q. What day is Mr. Rea's; doesn't he generally have regular business days that he goes to his office? A. Not at our office; no, sir.

Q. Are there not particular days of the week that he is in San José? A. Not at the office; no, sir.

Q. Well, in the city of San José? A. Well, I do not know.

Q. Do you not know it is his business to be there on Fridays and Saturdays every week? A. No, sir; I do not.

Q. Isn't that so? A. I do not know. I have often gone to the ranch to have checks signed.

Q. Did Mr. Tisdall ask you who Mr. Johnson was? A. Yes.

Q. You recollect that? A. Yes.

Q. Who else called on that day that Mr. Tisdall did not know? A. I do not know.

Q. Did he ask you who they were? A. No, sir.

Q. Is there anybody that called between the 15th of November and the 8th of January besides Mr. Johnson, who Mr. Tisdall asked who it was? A. I do not know.

Q. No one? A. I do not remember, so many people called there.

Q. What was there about Mr. Tisdall asking you who Mr. Johnson was that makes you recollect? A. I suppose because Mr. Johnson had been in so often asking for Mr. Rea. I do not know why he should, or any other reason.

Q. What is Mr. Tisdall's business there? A. He is a collector.

Q. Is he in the office most of the time? A. No, sir; not all the time; in and out. Either one of us there all the time. I generally tell him to stay when I go out on business.

Q. What hours is he supposed to be there? A. No regular hours. Supposed to be there in the morning at eight o'clock, and goes out at ten o'clock. Monday and Tuesday is collecting.

Q. What day of the week was it Mr. Johnson called there mostly? A. I do not remember.

Q. You say he always called at a certain hour? A. Generally he got around there at ten o'clock, between that and twelve and sat down and waited.

Q. And then he called eight or ten times between the month of November— A. Yes, and the middle of December; six or eight times.

Q. Where is Mr. Rea's office? A. Well, as Vice-President of the Electric Company it is 45 West Santa Clara Street.

Q. What other business has he in San José? A. I do not know as he has any now.

MR. BLEDSOE: Will you give us about the date that you say you went out after Mr. Rea? A. I should judge that it was in the latter part of November.

Q. And Mr. MacKenzie was with Mr. Johnson at that time? A. Yes; he was with him in the office when I came in from lunch.

JOHN E. RICHARDS.

Called and sworn, testified as follows:

MR. SHORTTRIDGE: Where do you reside? A. In San José.

Q. What is your occupation? A. I am an attorney at law.

Q. Do you know Mr. J. W. Rea? A. I do.

Q. Do you know a gentleman named H. H. Johnson, a member of this Assembly? A. I never knew Mr. Johnson personally, but I have seen him sufficiently to know him.

Q. Know him by sight? A. Know him by sight.

Q. Did you ever see him in the office of the Electric Improvement Company of San José? A. I did.

Q. On what occasion, if you remember? A. I saw Mr. Johnson there two or three times, as much as three times.

Q. About when? A. During the early part of December, to the best of my recollection.

Q. How did it happen? A. I am attorney for the corporation, and I am also attorney for Mr. Rea, and am frequently in the office. And the first time I recollect seeing Mr. Johnson there he came in and inquired for Mr. Rea.

Q. Of whom? A. I forget—one of the employés, either Mr. Tisdall or Mr. Bethell.

Q. What was said by Mr. Johnson? A. He simply inquired if Mr. Rea was in, and the answer was that he was not, and it is my impression that he waited for a few minutes in the room—the outside room—and then went away. That was the first time I had seen him in the office. The next time I saw him in the office of the company was on the day when Mr. Barrington and Mr. Johnson came into the office. I was there on that day when they entered at the request of Mr. Rea.

Q. In what part of the office were you? A. I was inside the desk of the outer office.

Q. And what occurred, if you know, between Mr. Rea and Mr. Johnson and Mr. Barrington? A. I knew of nothing that occurred in the

inner office into which they went, except as I had it from Mr. Rea immediately after the meeting, but they all went into the inner room.

Q. They all? A. I mean the three men went into the inner room.

Q. Who were in the outer office besides yourself, Mr. Richards? A. Mr. Bethell was there; I am not sure whether Mr. Tisdall was there or not. Mr. Edwards, who had been standing in the outer office, I think outside the bar, was there, and came into the office where I was after they went on into the inner office.

Q. Where did Mr. Edwards subsequently go? A. In a very few minutes Mr. Edwards took the key to the rear room and went through the private office.

Q. The room where the three gentlemen were? A. Yes, it was his; Secretary's office. It was his office and the office where the Directors hold their meetings. He went on into the office; the door was closed and I didn't see where he went.

Q. How long was it until Mr. Rea came out after this interview; about how long was it? A. About three quarters of an hour; for three quarters of an hour they were inside. I saw the two gentlemen, Mr. Johnson and Mr. Barrington, come out together, and almost immediately after that Mr. Rea came out and took me into his private office.

[The latter part of the answer was stricken out.]

Q. Have you seen that card before, and when? [Objected to as incompetent and irrelevant. Objection overruled.] A. Yes, I have seen the card.

Q. When? A. Immediately after this interview.

Q. Where? A. In the hands of Mr. Rea, and in my own hands, in the office to which Mr. Rea took me.

Q. Will you kindly look at the card? I will ask you if you made an examination of it at the time? A. I did.

Q. Kindly look at that card and state whether you recognize it as one handed to you on that occasion by Mr. Rea? A. That is the card which I saw.

Q. Was it marked as you now see it? A. It was.

Q. So far as you know, what became of the card?

[Objected to as immaterial.]

Q. Do you know what became of the card? A. I know what became of it that day.

Q. What? A. Mr. Rea showed it to me and returned it, after I had examined it, to his pocket.

Q. Did you subsequently see it? A. I did.

Q. Where and when? A. I saw it upon the Saturday morning of January 28th, I think the date was, whatever is the date named or marked on the envelope—on January 28th. I saw it in the hands of Mr. Rea.

MR. McPIKE: Saturday? A. My impression is it was Saturday.

MR. SHORTRIDGE: Where did you see it? A. It was in the office of the Electric Improvement Company.

Q. Where was the card deposited, do you know? A. Well, I am not able to state that from my own knowledge. I was not present when the deposit was made.

MR. BLEDSOE: How do you know that this card is in the condition now that it was when Mr. Rea called you into the back office? A. Well, the reason was because Mr. Rea called me into the back office, to consult

with me, as his attorney, with reference to the transactions which had just taken place, and then showed me the card, and I examined the card very carefully at that time.

Q. You say that those marks are the same that were on the card, and in the same position? A. To the best of my recollection and knowledge of names, the marks were on the card just as I see them here.

Q. Well, at that very time, was your attention called to those particular names? A. My attention was called to the marks on the card and the names opposite which the marks were made. In that conversation I might say that Mr. Rea purported to go over the whole conversation that had just occurred with him.

Q. With him? A. Yes.

Q. Did you advise Mr. Rea as to his course in the matter, related to you then and there? [Objected to as incompetent.] A. I did.

Q. What was it? [Objected to, and objection sustained.]

Q. Did he follow your advice and drop the whole matter, if you know? [Objection sustained.]

MR. McPIKE: You can cross-examine him, gentlemen, and if I desire to cross-examine him, I will, later.

MR. BLEDSOE: Were you posted in the front room at the time Mr. Barrington, Mr. Rea, and Mr. Johnson were in the back room, for the purpose of listening to any conversation that might occur? A. I will answer that question, Mr. Bledsoe, by stating that I did not understand that I was. I heard Mr. Rea's testimony, in which he stated that he understood or expected that I would, but I did not so understand the matter.

Q. Was there any such arrangement between you and Mr. Rea? A. There was an arrangement between Mr. Rea and myself, and if you wish me to give the exact language I will do so, that I was to be there at that time and I was there. I have no recollection of an arrangement made to the extent of my being there as a witness to overhear a conversation passing between walls—nothing of that kind.

Q. Was there any arrangement by which you were to have other persons there for the same purpose? A. No; I was not there for that purpose, as I understood. From Mr. Rea's statement it seems we misunderstood each other as to the way I was to be there. Of course I have not endeavored to give the conversation. If it is not objected to, between Mr. Rea and myself, I can do so.

Cross-Examination.

MR. McPIKE: Mr. Richards, you are Mr. Rea's attorney? A. Yes; in some matters.

Q. And also attorney for the Improvement Company? A. I am the regular attorney of the Electric Improvement Company.

Q. How long have you been Mr. Rea's attorney? A. I think it is about two years.

Q. With a regular retainer? A. Mr. Rea employs me as he employs other attorneys.

Q. You understand, though, that you are what you would call his regular attorney? A. I think Mr. Rea consults me generally in his matters, but I do not know all Mr. Rea's business.

Q. In matters in regard to the Railroad Commission, too? A. No, sir; I am not Mr. Rea's attorney in railroad matters.

Q. But you have written most of his letters? A. No, sir; I have not.

Q. Are you attorney for Mr. Shively also? A. I am.

Q. You filed the Shively complaint?

[Objected to, and objection sustained.]

Q. Do you know what you went to Mr. Rea's office for? Did you know before you went what you went there for? A. Upon what occasion?

Q. The day that Mr. Barrington and Mr. Johnson were there? A. I know what I understood.

Q. Did you know before you went what you were going there for? A. Yes, I did.

Q. What was it? A. It was in order to be present while an interview was going on, and to advise Mr. Rea with reference to the interview—the meeting.

Q. But you did not know? A. Immediately after or before this occurrence, I do not know which. That was my understanding of Mr. Rea's direction to me.

Q. That was his directions—that you were to be there to hear a conversation? A. That was my understanding of his direction. Do you wish his direction? I can state the conversation between Mr. Rea and myself in relation to my going there.

Q. Can you repeat the names on this card now opposite which the marks are? A. I think I can.

Q. What are they? A. Mr. Hurley, Mr. Sims, Mr. Schroebel, Mr. Schlesinger.

Q. Any one else? A. And Mr. Johnson.

Q. Did you know any of these gentlemen at that time? A. I did not. I only had seen Mr. Johnson.

Q. Do you know any of them now? A. Only as I have seen them here.

Q. You did not know them at the time that card was handed to you, you say? A. I did not.

MR. CHAIRMAN: I think you may state the directions given you by Mr. Rea.

[Objected to as incompetent.]

A. I will proceed. On the day before this interview took place—

[After consultation, the Chairman sustained the objection.]

H. J. EDWARDS.

Called and sworn, testified as follows:

MR. SHORTRIDGE: Where do you reside? A. San José.

Q. What is your business? A. I am Managing Secretary of the Electric Improvement Company.

Q. Do you know James W. Rea? A. I do.

Q. Do you know Assemblyman H. H. Johnson? A. Yes.

Q. Did you ever see Mr. Johnson in the office of the Electric Improvement Company—the office frequented by Mr. Rea? A. I have.

Q. How many times? A. Eight or ten times.

Q. When? A. After the election up to about the middle of December, I think, as near as I can remember.

Q. Did you ever speak to Mr. Johnson when he came to the office? A. I have.

Q. What inquiries would he make, if any? A. If Mr. Rea was there.

Q. Did he ever remain waiting for Mr. Rea? A. Yes.

Q. How long at a time? A. At times he would come in and ask if Mr. Rea was there, and I would say no, he is not here. And at times he would come in at the door, and I would see him, and I would say he is not here. (The witness here indicated by motion of the hand.)

Q. Why did you do that?

[Objected to, and objection sustained.]

MR. BLEDSOE: Had you received any instructions from Mr. Rea to inform Mr. Johnson he was not in? A. I had not.

MR. SHORTRIDGE: How many times did he call there? A. Eight or ten times.

Q. And remained at times, how long? A. The most of the time he would come in and remain only long enough to ask for Mr. Rea, and when coming through the door I would say he is not here. And one time I know he was in the office—twice I know that he was in the office, once about half or three quarters of an hour, and the other time half an hour, or something near that, I do not know exactly.

Q. Did you ever see him in the office with any one else? A. Yes.

Q. With whom? A. I saw him in the office with Major Barrington.

Q. Did you ever know him to come there and inquire for Mr. Rea when Mr. Rea was in, in point of fact, in the office? A. Yes.

Q. Did Mr. Rea see him on that occasion? A. Yes.

Q. What occasion was this? A. I was sitting in the private office with Mr. Rea discussing a matter pertaining to our business, when the collector, Archie Tisdall, came to the door of the private office and spoke to Mr. Rea, "There is a gentleman wishes to see you." He says, "Who is he?" I think he said, "I do not know." Mr. Rea got up and looked through the open door, or the door was just ajar, and says, "Tell him I am busy."

Q. Who was this gentleman? A. I looked through the door at the same time and saw it was Mr. Johnson.

Q. Did Mr. Rea see him on that occasion afterwards, and hold an interview with him that day? A. No, sir; I said to Mr. Rea, "What in the name of God does he want with you?"

[The Chairman ordered the last part of the answer stricken out.]

Q. Did you see him there on any other and subsequent occasion? A. Yes.

Q. When? A. I saw him, I think it was, between the first and middle of December.

Q. Do you remember the day of the week? A. No, sir; I do not.

Q. With whom did he come to the office on that occasion—the last one referred to? A. He called at the office—the private office.

Q. Who is this? A. Mr. Johnson, with Major Barrington and Mr. Rea.

Q. You saw them go in, did you? A. Yes.

Q. What did you subsequently do in and about the office? Where did you go? A. At that time?

Q. Yes. A. I was coming through; I was coming into the outer office, and I saw Mr. Rea going through to the private office. And desiring to see him (I saw him with two men, one, I noticed, was Barrington), I followed them in. They had just gone in, and closed the door; and, going by the cashier, I said to him, "Who is——"

[Objected to.]

Q. When you got into the room was it Mr. Johnson that was in there with Mr. Barrington, and did you pass through the room where Mr. Rea was? A. I did, I went through the private office and opened the door and went through the room.

Q. Where did you go to? A. I went to—through the office and there is a door leading out of the room—the back of the office, and I went there.

Q. Out of the room in which these gentlemen were? A. Yes.

Q. What did you hear and what did you then do? A. I opened the door—you want the conversation that took place between Mr. Rea and Mr. Johnson?

Q. Yes. From that point you might proceed and state all you know in regard to the conversation or the acts of the parties in the room.

MR. CHAIRMAN: State all that you know. A. This is what I heard now; when I opened the door Mr. Rea was standing up in the office, Mr. Johnson was sitting down, and Mr. Barrington was sitting down. Mr. Rea said, passing a piece of paper to Mr. Johnson, "I care nothing for the note or the indorsements on the note; the cold-blooded fact is you want one hundred dollars." Mr. Johnson says, "Yes."

Q. Well, go on? A. About the conversation?

Q. Yes; where you went to and what you did? A. Well, that transpired as I went through the office and Mr. Rea says, "The cold-blooded facts are that you want one hundred dollars?" Mr. Johnson says, "Yes."

Q. Where did you go then? A. I was then through the door at the outer office.

Q. Where were you standing when you heard this? A. I was passing through the office.

Q. Did you pass on through the door out of this private room. A. Yes.

MR. BLEDSOE: Will you state first whether you heard anything else?

MR. CHAIRMAN: What did you hear?

MR. SHORTRIDGE: As you passed through you heard the remark which you have just testified to? A. Yes.

Q. When you went on through the door, did you stop. A. Yes.

Q. Where did you stop? A. I stopped as I passed through the door. It has a bolt on the inside, and in opening the door, I went out and stood there on the outside of the door, with the door open; maybe so much; so I stopped and looked at some incandescent lamps that were there at that time.

Q. Did you hear any conversation going on between Mr. Rea and Mr. Johnson while you were standing there, and if so, state what it was? A. Mr. Rea said that. Mr. Rea said, "I understand that you signed a contract with the Traffic Association," and Mr. Johnson responded, "Yes; but I did that to catch some votes out in the Willows that I could not have caught without doing so, and I know that this will be my last chance and I propose to make the most of it, and there are a number of

others that are going to do the same thing;" and Mr. Rea says, "Are they out for the money or out for the stuff like yourself?" And he says, "Yes, if it can be made an object;" and Rea said, "How are they on Republican United States Senator?" "Well," he said, "That would be a hard thing for them to leave the party, but there is one of them that I know of, who will, I think, and the rest I will have to see. We made up our minds not to do anything on that until we got to Sacramento." And then Rea says, "Well, who are those parties, will you write them down?" Johnson responded, "I had a card. Major, I gave you a card this morning, and have you got it?" Rea says, "Be careful what you are doing." And he said I think that there was one he was sure of and the rest he did not know about United States Senator. "Now," he says, "mark all of those that are out, with the exception of United States Senator, that will stand in." Rea then said, "Would you sign a contract to stand with the Commission," and Johnson said, "I would rather not sign a contract, but I will pledge you that I will stay with you." Rea said, "The fact of the case is that I have been paying out considerable money for my taxes, and have had to borrow money myself, and I am not in the shape now at this time," or something to that effect. He then went on, I think, at this time, and he explained to Johnson the position that he took in the Railroad Commission, and he discussed that with him, and Johnson said, "I understand that; that is all right." Major Barrington and Rea then came out of the office. I think it was that time— [Objected to.] Well, he came out of the office.

MR. McPIKE: You have been "thinking" a good deal? A. I just said that Barrington and Rea came out of the office. I didn't say I think. I say they came out at that time, and Barrington said that he wanted him to understand that he did not bring him in here for any such object as that, or something to that effect, if he had he wouldn't have been there with him.

MR. McPIKE: Johnson said that? A. No; Barrington said that to Rea.

Q. That was said in the presence of Rea? A. He said that to Rea.

Q. And Johnson was not present? A. No.

MR. McPIKE: I object to that, and move to strike it out.

[So ordered.]

MR. SHORTRIDGE: How long did this conversation proceed between Mr. Barrington and Mr. Johnson and Mr. Rea? A. I should think it was half or three quarters of an hour.

Q. Did you hear most of the conversation, do you think? A. Yes; most of it.

Q. Could you see the parties, or any of them, through the door? A. Yes.

Q. Which ones could you see, and did you see? A. I saw Mr. Johnson and Mr. Rea most all the time.

Q. Did you see a card either in the hands of Mr. Johnson or Mr. Rea? A. I saw a card or a piece of paper; I do not know what it was.

Q. That was about the time you heard them speaking about marking; was it at that time? A. Yes.

MR. BLEDSOE: Did you see either one of those men have a pencil in his hand? A. I saw Mr. Johnson have one.

Q. How far were you from these gentlemen—about how many feet? A. I think about eight or ten feet.

Q. About as far as I am sitting from that gentleman over there leaning his head on his hand? A. Not quite as far.

Q. Were you standing near the door in the room? A. Yes, I was standing near the door, and at times was seated on a barrel.

Q. How far was the door away, just illustrate with your hand? A. Just that much (showing).

Q. How was it that those gentlemen could not observe you—how was it they could not or did not? A. I do not know but that they did.

Q. You do not know but that they did see you? A. No, sir.

Q. Did you make any effort at concealment? A. No, sir.

Q. How large was the room that you were standing in? A. Well, I could explain that to you with a diagram—the whole thing. It was a very large room. The little private office is merely partitioned off with tongue-and-grooved lumber off of the large room.

Q. How large is the private room that they were in? A. That is about I think ten feet—twelve or fifteen by eight or ten—just a small private office.

Q. You think they were about ten feet from you? A. About eight feet—eight or ten feet.

Q. In what tone were they speaking? A. They were speaking in an ordinary tone.

Q. Loud enough to be heard distinctly where you were? A. Yes.

Q. Have you repeated all the conversation that you have heard? A. Well, I have repeated all that I remember—all that I do remember now.

Q. Did you hear anything said by any one there with regard to the Railroad Commissioners—about the action of Mr. Johnson on the Railroad Commissioners—did you hear Mr. Johnson say anything about that or Mr. Rea? A. About whose actions?

Q. About Mr. Johnson's prospective action upon the Railroad Commission. A. Only what I have stated.

MR. SHORTIDGE: What was it? A. That he would stand in with the Commission.

Q. Repeat it, please. A. That he would stand with the Commission.

Q. How long have you been living in San José? A. I have lived there about fifteen years.

Q. And what has been your business during that time? A. I went to San José and started in as a collector for the Gas Company. When I left the Gas Company I was the manager.

Q. How long have you been connected in business with Mr. Rea? A. I have been in business with him about, I think about two years—two or three years.

Q. You have been about fifteen years in San José? A. About fifteen years.

Cross-Examination.

MR. MCPIKE: What did Mr. Rea have to say about the Railroad Commission to Mr. Johnson? A. Well, he discussed it to Mr. Johnson.

Q. What did he have to say? A. Well, I could not really go over the long argument he made.

Q. Go over what you recollect. A. Well, I recollect that he said that he stood in with Leeds on some propositions, but that, in speaking of the Western schedule, that he did his duty as a Railroad Commissioner, and had usually voted against them; all but once, I think he

said. And that the complaint, that the way that Mr. Leeds desired to bring the matter up before the people, was not legal; that he wanted them to do what the Legislature itself would not do.

MR. BULLA: Did he say what that was? A. I think it was in regard to fixing a schedule of rates. I am not familiar with railroad matters.

Q. Did he say what it was? A. I think it was in regard to fixing the schedule of rates.

MR. MCPIKE: What else? A. I do not remember anything else that he said, now.

Q. Nothing else? A. No; nothing else.

Q. Have you repeated everything now that took place in the room that you heard between Major Barrington, Mr. Johnson, and Mr. Rea? A. All that I remember.

Q. How long had they been in the room before you went there? A. They had preceded me a few minutes, probably.

Q. Not more than half a minute? A. Yes; or a minute at the most.

Q. Then you heard nearly everything that was said? A. Yes.

Q. How long were you going through that room? A. I went in there, and I cannot tell how long I was going through it.

Q. How far had you to walk from the door you entered to the door you went out? A. I think ten feet.

Q. Did you walk deliberately right along, or did you halt? A. When I went in, I stopped and looked at Mr. Rea; I halted.

Q. And looked at Mr. Rea? A. Yes.

Q. How long did you halt? A. Only an instant. When I saw he was busy, I passed on.

Q. Did he stop his conversation because you came in? A. No, sir; he did not.

Q. Went right along with it? A. Yes.

Q. You went through the office, you say, and looked at some electric lamps? A. No; I went through the office, really. I took a key, and went through there altogether.

Q. To get to another room. A. Yes; back.

Q. Is there any other way to get to that room besides going through the office? A. Yes.

Q. And without the key? A. By going the other way around the office.

Q. You could have got into the other room without going into the room where Mr. Rea was? A. Yes; I could by coming out of the office and going around another way.

Q. How far would that have been? A. About double or treble the distance.

Q. You knew Mr. Rea was in that room with those two gentlemen? A. I did.

Q. And must have known he was busy with them when you went in there? A. I did not stop to consider; it was my own office.

Q. You say you saw the three go into the private office? A. Yes.

Q. Did you not believe they were going in there to talk business? A. If I had stopped to think I would have believed so.

Q. You did not stop until you found they were talking themselves, and then you stopped? A. I stopped as I have stated.

Q. How long have you known Assemblyman Johnson? A. I have known him—I think the first time I knew him was the time the collector came to the door.

Q. What month was that; or was it after election? A. Yes.

Q. About what date? A. It was in November, some time.

Q. About when? A. I cannot tell; between the 20th and the latter part, I think.

Q. Between the 20th and the latter part of November? A. Yes.

Q. Are you in the office every day? A. Yes.

Q. Remain there in that little room nearly all day? A. No, sir.

Q. You go to your ranch as your business requires you, but remain mostly in the office? A. No, sir; my business requires me to be at times mostly in the office, and then I am out. I am out now and haven't been there for a day or two.

Q. Is that the only acquaintance that you had with Mr. Johnson, simply the fact that he had been there a few times to the office? A. Yes; that is all that I remember.

Q. Who told you who he was? A. I think the first time I knew him, as I have stated, was the time that the collector came to the door and asked for Mr. Rea. When he said, "Tell him I am busy," I looked through the door at the same time and saw—

Q. You saw Mr. Johnson? A. Yes.

Q. Did you know him then as Mr. Johnson? A. No; I do not think so.

Q. When was the first time that you got acquainted with him to know him as Johnson? A. I say I think that is the time.

Q. But you did not know that was Mr. Johnson? A. Mr. Rea said it was Mr. Johnson.

Q. Is that all he said? A. No, sir; do you want me to state it all?

Q. No, sir. What acquaintance had you with Mr. Johnson; that is, the first time that you knew Mr. Johnson? A. That is the first time, I think, that I knew Mr. Johnson.

Q. When was the next time you saw him to know him? A. I couldn't say when was the next time. I have no record of it and made no record of it.

Q. Now, how is it your memory is so good as to certain things, and to others very poor? A. Well, my memory may be so, but I am telling you what I know. What I do not know I cannot tell you, and you cannot find out what I do not know.

Q. I want to know the first time he was there, and the second time, and the third time. A. I couldn't tell you.

Q. How many times was he there? A. Eight or ten times.

Q. The fifth time was what time? A. I do not know.

Q. What day of the week was it he was there the last time? A. I do not know. I do not know what I had for breakfast yesterday morning.

Q. What day of the week was he there the last time. A. I do not know.

Q. What day of the month? A. I do not know.

Q. Next to the last time? A. I do not know.

Q. What day of the week, or day of the month, was he there with Mr. Barrington? A. I do not know.

Q. Was it November or December? A. The last time?

Q. Yes. A. It was in December.

Q. What time in December? A. Some time between the 1st and the 20th; I cannot tell.

Q. That is between the first and last? A. No, sir; between the 1st and the 20th.

Q. Was it nearer the 20th than the 1st? A. I cannot tell you.

MR. BLEDSOE: What time did you make out your bills for collection? A. We make them out—the monthly bills are made out the first of the month.

Q. Do you know what time the Secretary, or Treasurer, or whoever it is, makes out the checks for Mr. Rea to sign? A. Well, Mr. Rea signs the checks as we need them.

Q. To pay the employes pay day? A. Well, I will tell you; we pay the 5th of the month.

Q. You pay on the 5th of the month? A. Yes.

Q. Is there any connection in your mind between pay day and the time when these gentlemen were in the room? A. No, sir. I would like to tell you why. It is this, because Mr. Rea will come in and sign a number of checks in blank. I being the Secretary of the company, when we issue those checks I sign them, and not till then. Mr. Rea is away a good deal, and would not be there to sign the checks, and therefore he signs them in blank, and they are not negotiable without my name on them.

MR. McPIKE: After the time that Mr. Barrington and Mr. Johnson were in the office, when was the first time that you had any conversation about their being there together? A. I do not think I ever had any conversation in regard to it at all until this business came up.

Q. That is, about the time Mr. Rea's letter was published? A. After the letter was published.

Q. And you never spoke about the occurrence, and never had any conversation with anybody about it, until after Mr. Rea's letter was published? A. Yes.

Q. Did Mr. Rea ever ask you anything about it? A. No, sir.

Q. Not a word? A. No, sir.

Q. Who did you converse with about it afterwards? A. I conversed with Mr. Richards.

Q. Did he come to you as Mr. Rea's attorney and talk with you about it? A. Yes.

Q. Did you see Mr. Richards there that morning? A. When?

Q. The morning that Major Barrington and Mr. Johnson were there? A. Yes.

Q. Where was he? A. Mr. Richards was sitting at a table like this.

Q. Had you any conversation with him that morning? A. Undoubtedly I did.

Q. Beforehand? A. Before I went in there?

Q. Yes. A. I just passed the time of day.

Q. Nothing else? A. No, sir; not that I remember.

Q. Did you know that Major Barrington and Mr. Johnson were coming there that morning? A. No, sir.

Q. Knew nothing about it? A. No, sir; nothing whatever in any manner, shape, or form.

Q. Did Major Barrington and Mr. Rea come out into the room where you were, when they had the conversation that has been ordered stricken out? A. Yes.

Q. Did they see you standing by the door? A. Yes.

Q. And you heard what Mr. Barrington was saying to Mr. Rea on that occasion? A. Yes, I heard part of it.

Q. The door was open when they went there? A. Yes.

Q. They saw you standing near the door? A. Yes.

Q. And you were standing just exactly where you were? A. No, sir; not when they came through the door.

Q. You got out of the way? A. I had to.

Q. You got out of the way to let them out? A. Yes.

Q. But you did not change your position at all? A. I certainly did, for I got out of the way.

Q. But up to that time? A. After I changed my position I do not know what I did then. I changed it again, I guess.

Q. What did Major Barrington and Mr. Rea do after they came out there and you heard their conversation? A. They were there. I do not know what became of them.

Q. Did you see Major Barrington and Mr. Johnson go away together? A. No, sir; I did not.

Q. Was Mr. Rea a stockholder in the Gas Company while you were collector? A. No, sir.

Q. You are in his employ now, are you? A. No more than I'm in my own. He is a Director and I am a Director of the company.

Q. And a stockholder? A. Yes.

Q. And you draw a salary? A. Yes.

Q. Who is the larger stockholder, you or Mr. Rea? A. We are both the same.

Q. You are a man of family? A. Yes.

MR. BLEDSOE: Are you related to Mr. Rea in any way? A. No, sir.

Q. Family relations? A. No, sir; in no way, shape, manner, or form.

MR. BULLA: Particularly friendly with him? A. Yes.

Q. With Mr. Rea? A. Yes.

Q. On intimate terms with him? A. Most intimate.

MR. BLEDSOE: Why didn't you tell any one, or converse with Mr. Rea about what you had heard? A. Well, I had no object. I think that was the reason.

Q. No object, as none of your business, or what? A. Well, sir; it didn't affect me, or my business.

MR. BULLA: What are your politics? A. I am a very stanch Republican, only when there is a better Democrat up.

MR. BLEDSOE: Do you know why it was that Mr. Richards came to you seeking such information?

[Objected to, and objection sustained.]

MR. MCPIKE: Mr. Edwards, the last thing you heard Mr. Rea say, as I understand, to Mr. Johnson, "Come back on Saturday," or "I will see you on Saturday?" A. I do not remember.

Q. Was that the last thing that took place? A. I do not remember that he said that or not.

Q. What was the last thing that Mr. Rea said to Mr. Johnson. A. I think the last thing that he said was, that I am hard up myself and have been paying my taxes, and I have had to borrow money, and so on.

Q. Were you there when these words took place, before he entered into this long discourse about Mr. Leeds? A. No; I cannot recollect.

Q. Then, which were the last words? A. I do not remember which were the last words.

Q. Didn't you hear Mr. Rea tell him he would see him next week or would meet him on Saturday? A. I do not remember whether I did or not.

Q. You knew that a fraudulent proposition was made there, did you not, at that time? A. No; I did not know that it was a fraudulent proposition.

Q. Have you related the conversation here in which, as you state, Mr. Johnson had agreed to sell his vote to Mr. Rea? A. I have made a statement here.

Q. Will you answer the question yes or no? A. I made no such statement. I merely stated the conversation that took place there.

Q. And you have retained that conversation in your mind long enough to come here and detail it? A. In a measure, I think that I have detailed it.

Q. Didn't you infer from that that Mr. Johnson had made a proposition to Mr. Rea to sell his vote for one hundred dollars? A. I inferred?

Q. Yes. A. Do you know what I inferred?

Q. Answer the question.

[The Chairman ruled the question out.]

Q. You never went to the District Attorney and reported anything that you heard that night? A. No, sir.

Q. You went to no Grand Jury for the purpose? A. No, sir; I kept busy about something else.

Q. Was that such an ordinary occurrence in that office that you did not think anything about it? A. No, it is not.

Q. It was rather usual? A. Yes.

Q. Was it not such an unusual matter as would cause you to have some feeling about the matter yourself, when you saw a felony committed right under your eyes?

[The Chairman ruled that the matter was immaterial.]

Q. If you did not desire to get mixed up in it, how did it happen that somebody found out what you knew without you telling it to somebody since? A. They asked me.

Q. They asked you if you stood outside and acted as an eavesdropper? A. You might call it what you please. Mr. Rea and Mr. Barrington were out there and saw me there.

MR. BULLA: You said they asked you about it. Who asked you about it? A. Mr. Richards. Mr. Richards said to me, "You were out there and overheard some of that conversation."

MR. MCPIKE: How did he know you were out there, and knew that you overheard the conversation? A. Ask Mr. Richards.

Q. Will you answer my question, sir? A. Only that way.

Q. I didn't tell you to tell me to ask Mr. Richards? A. But I told you that.

Q. Do you know how Mr. Richards knew you were there? A. Only what Mr. Richards knew. Mr. Rea told Mr. Richards. Now you have got it. It is merely hearsay. I do not know what Mr. Rea told him.

Q. Mr. Rea knew you was at the door there, concealed? A. I do not know whether he knew it. He saw me there when he came out with Mr. Barrington.

JOHN E. RICHARDS.

Recalled.

MR. SHORTRIDGE: State, Mr. Richards, whether, if you know, Mr. Johnson kept the appointment made, and called at the office of the company on the following Saturday. A. He did.

Q. Were you there? A. I was.

Q. And you saw him? A. Yes.

Q. How long did he remain? A. But a few moments.

Q. For whom did he inquire? A. He inquired for Mr. Rea.

Q. And what answer was made to him? A. That he was not in, or was not there. The answer was not given by me.

Q. By whom was it, if you know? A. I do not remember who gave it.

MR. BULLA: Is that all he said—was that all he said? A. To inquire if Mr. Rea was in, or language which imported that.

Q. No other conversation between you? A. That was the whole conversation.

[The committee here adjourned until Thursday evening, February 9th, at seven o'clock.]

THURSDAY EVENING, February 9, 1893.

HARRY CONNER.

Called and sworn, testified as follows:

MR. RICHARDS: What is your name? A. Harry Conner.

Q. Where do you live, Mr. Conner? A. I live in San José.

Q. How long have you lived in San José? A. Well, I was born and raised there.

Q. Were you living there last November and December? A. I was.

Q. What is your occupation? A. I am a blacksmith.

Q. Where is your blacksmith shop, in which you work, in San José? A. On South Market Street.

Q. Do you know Assemblyman H. H. Johnson? A. Yes.

Q. Did you meet him during the months of November and December, after election? A. Yes.

Q. Do you know where Mr. Johnson worked in San José? A. He worked right in the rear of the shop where I work.

Q. What kind of employment? A. He worked in a lumber yard belonging to Mr. Meserve.

Q. Where did you first meet Mr. Johnson? A. In this lumber yard in the rear of the shop.

Q. Did you ever have any conversation with him with reference to his coming to the Legislature? A. I did.

Q. When? A. It was about nine days, nine or ten days, after he was elected.

Q. State what that conversation was as near as you can remember? A. I congratulated him on his hard fight he had against his opponent, and we did not have very much to say about the election, and we talked about the different Senators, which one we thought would be elected.

Q. Now was it in that conversation or a later conversation, if one occurred— A. I believe the next day the conversation occurred that he wanted to meet Mr. Rea.

Q. Did he state the purpose for which he wanted to meet Mr. Rea? A. Well, he thought Mr. Rea had a great deal of influence in the Assembly, and through him that Mr. Rea could help him get his bill through.

Q. And what did he say he wanted to meet Mr. Rea for? A. Well, he did not tell me what he wanted to meet him for.

Q. What, if anything, did you say to him about meeting Mr. Rea? A. Well, I told him if he wanted to meet Mr. Rea that I could make an appointment with Mr. MacKenzie, or Mr. MacKenzie could make an appointment with Mr. Rea, and he could meet him.

MR. BLEDSOE: Did he say that he thought Mr. Rea would have great influence in the Assembly? A. Yes.

MR. RICHARDS: How did you come to mention Mr. MacKenzie? A. I told him Mr. MacKenzie was Mr. Rea's private secretary.

Q. I will ask you whether up to that time you were acquainted with Mr. Rea? A. No, only in politics; I had seen him, for everybody knows him, but not personally acquainted with him.

Q. Did you make such an appointment? A. I made an appointment with him.

MR. BLEDSOE: With who? A. With Mr. MacKenzie, to make an appointment with Mr. Rea.

MR. RICHARDS: Did Mr. Johnson meet Mr. MacKenzie? A. No, sir; not then.

Q. To meet Mr. MacKenzie? A. He made an appointment with me, first. To meet Mr. MacKenzie?

Q. Yes. A. Yes.

Q. Was that appointment kept? A. Yes, it was.

Q. State the circumstances under which the appointment was kept. In the first place about what was the date of that appointment? A. I could not swear what the date was, but it was nine or ten days after the election, as near as I can say. It is very hard to keep the dates in your head.

Q. It was shortly after the election? A. Yes.

Q. And after the first conversation you have mentioned? A. Yes.

Q. Now, will you state to the committee just the circumstances under which he met Mr. MacKenzie, if he did meet him? A. Well, I met Mr. Johnson between the hours of seven and eight; it was on the corner of First and Santa Clara Streets.

Q. And what occurred? A. He asked me—he told me. He says: "I do not want to go in to see him in his office, for some one might see me going in there that supported me in the election." The fellows that supported him in the election would see him going into Mr. Rea's office and denounce him for going in there.

Q. What arrangement was made then so that they would not see him, if any? A. So I said, "We can go in the back way." So I went down to the office to see Mr. MacKenzie.

MR. CHAIRMAN: What office? A. That was in the Electric Improvement office, where Mr. MacKenzie sometimes stayed.

Q. You say you went to Mr. MacKenzie and asked him certain things? A. I asked him if we could get in the back way.

[Objected to.]

Q. As a matter of fact, did you go in the front or back way? A. We went in the back way.

Q. How did you get in the back way into the office?

MR. BLEDSOE: Who went with you?

A. There was three of us. When I came back I went to Mr. MacKenzie, and then I came back and I met Mr. Johnson and Mr. Slagts, and they both came together. I says, "We can go in the back way." Mr. Johnson says, "Is Mr. Rea in the office?" I says, "No;" I said, "Mr. MacKenzie is there." He said, "Well, I don't want to meet MacKenzie, I want to meet Rea." When I says, "Mr. MacKenzie is Rea's private secretary, and whatever you say to MacKenzie will be the same as talking to Mr. Rea." So we concluded to go in the back way.

Q. Did you go in the back way? A. Yes.

MR. BLEDSOE: Who, you and Johnson, and Slagts? A. I, and Johnson, and Slagts.

MR. RICHARDS: Now you went in the back, how did you go in there? A. We went in the back gate there, where they communicate with the rear of the houses or buildings there on the block. Mr. MacKenzie came out and met us, so we would not make a mistake and get in the wrong place, and I introduced Mr. MacKenzie to Mr. Johnson, and also Mr. Slagts to Mr. Johnson, and Mr. MacKenzie and Mr. Johnson went into the private office, and that is all I heard. I did not hear any conversation.

MR. McPIKE: Who went into the private room? A. MacKenzie and Johnson.

MR. RICHARDS: How long did they remain in the private room? A. I should judge twenty-five minutes or half an hour.

Q. Where did you remain, or Mr. Slagts? A. I and Mr. Slagts—we sat on the boxes there that were stocked with carbon and incandescence. They were all packed in boxes and boxed up, and we sat down there and talked.

Q. At the end of the time you have mentioned, did Mr. Johnson come out? A. Yes, he came out?

Q. And joined you two? A. Joined me and Mr. Slagts, and we all went out.

Q. Where did you go? A. We started out through the alley of this place, where they go into the rear of the houses. I asked Mr. Johnson if he had made an appointment with Mr. MacKenzie to see Mr. Rea; he said he had.

Q. Was that all the conversation that occurred between you at that time? A. No, sir; that was not all the conversation.

Q. Between Mr. Slagts and you—was there any conversation between Mr. Slagts and you?

MR. McPIKE: Did Mr. Johnson hear the conversation between Mr. Slagts and yourself? A. No, sir; he did not.

[The Chairman ordered the answer of the witness stricken out.]

MR. CHAIRMAN: In this conversation you are stating about— A. Mr. Slagts and I sat on a box.

Q. Mr. Johnson was not there? A. Mr. Johnson was in the room with Mr. MacKenzie.

Q. That is the conversation between you and Slagts which you have detailed? A. No, sir; I have not detailed that conversation.

MR. RICHARDS: You separated then, that evening, did you? A. Yes, we separated. I bid Mr. Johnson good night, and he went home, or he said he was going home.

Q. You do not know whether that appointment was kept? A. I do not.

Q. Now, did you see Mr. Johnson at any time subsequent to that time in which he made any inquiry with reference to Mr. Rea? A. I should judge about five days after he asked me where Mr. Rea lived.

Q. Where did that conversation take place? A. That was in front of the shop where I work.

MR. McPIKE: Four or five days afterwards? A. Yes. I told him I did not know; I told him I thought he lived out on the Alameda somewhere.

MR. BLEDSOE: You think that was about eight or ten days after election? A. Somewhere along about that.

Q. Was it before the 7th day of December? Do you know when the election was? A. The 8th of November.

Q. Was it before the first of December? A. Yes; it was before the first of December.

Cross-Examination.

MR. McPIKE: How old are you? A. Twenty-seven years old.

Q. Are you married? A. No, sir.

Q. When did you get acquainted with Mr. Johnson? A. Right after election.

Q. What date? A. I cannot say.

Q. How long after the election? A. About eight or nine days after the election.

Q. Eight or nine days after the election? A. Yes, somewhere; I cannot tell.

Q. Just about this time then that you testified about? A. Just the same as I testified.

Q. What was the conversation you had with Mr. Johnson, when you formed his acquaintance? A. I congratulated him on his hard fight that he had against his opponent.

Q. State what you said to him? A. I said the same as before.

Q. Tell us who introduced you? A. No one introduced me.

Q. Did you go into his lumber yard, or he come to your blacksmith shop? A. Some of the lumber is on the property belonging to the blacksmith shop.

Q. What particular part of the premises did you meet him on? A. In about the center of the premises.

Q. Whose premises? A. They belong to Mr. Meserve.

Q. The lumber yard? A. Yes; I occasionally go over there.

Q. How long have you been to work in that blacksmith shop? A. I have been there since, I believe, the 15th of July.

Q. And you never met Mr. Johnson until seven or eight days after the election? A. I saw him; I never met him to speak to him.

Q. When you did meet him to speak to him, you went on to the premises where he was employed? A. I do not think I went looking for Mr. Johnson.

Q. For whom were you looking? A. Nobody. I go out there occasionally and talk with the men, and got acquainted with some of the men there.

Q. Mr. Johnson had been employed there, and you had seen him since July? A. No, sir.

Q. When did you first see him there? A. I saw him just before election. He was pointed out to me.

Q. Who pointed him out to you? A. Hank.

Q. Where? A. In the rear in the yard, piling lumber. He said, "That is the man going to be elected Assemblyman."

Q. And you never saw him again until you met in the lumber yard or in the blacksmith shop, when you went and congratulated him on the election? A. He has gone through the blacksmith shop.

Q. Did you speak to him? A. I said, "How do you do?"

Q. Did you congratulate him on the election? A. That was before election, on different days he passed through the shop.

Q. When he passed through the shop you knew he was a candidate for the Assembly? A. I knew he was a candidate, and was not acquainted with him.

Q. If you did meet him you did meet him on his premises; that is, on the premises where he was employed? A. Yes.

Q. What did you go there for? A. Nothing particular.

Q. Were you there engaged in blacksmithing? A. No, sir.

Q. You went there out of mere idle curiosity? A. I went there, as I had several times before, and talked with the men.

Q. What did you go there on that occasion for? A. I said I went over there merely to talk with the men.

Q. What men? A. Mr. Johnson and the gentlemen that were employed with him.

Q. Then you went over there for the purpose of talking with Mr. Johnson and the rest? A. Yes.

Q. What were the first words you said to Mr. Johnson when you went there? A. I shook hands with him and congratulated him upon the hard fight that he had with his opponent.

Q. Are you a Democrat? A. I am a Democrat.

Q. Do you live in his district? A. No.

Q. You congratulated him on the hard fight he had with his opponent? A. Yes.

Q. Who was the opponent? A. It was Mr. Kirkpatrick.

Q. How do you know he had a hard fight? A. Because all the boys said he had a hard fight to beat Kirkpatrick.

Q. Who told you? A. I met a man named Roupe, one of the men that supported him in his nomination.

Q. Then you knew nothing about it, except what somebody else told you? A. That is all.

Q. Didn't you know anything about the majority or the parties? A. No, I did not, because it was immaterial to me, because I did not live in the district.

Q. How long have you known Mr. MacKenzie? A. I have known Mr. MacKenzie, off and on, for the last ten years.

Q. Is that all that you said to Mr. Johnson, that you congratulated him on his election and his hard fight? A. Now, it is pretty hard to recollect.

Q. Please, if you can, recollect every word that you said to him, for it is important. A. Well, we talked about—he was for a great many things up here.

Q. Up where? A. At Sacramento.

Q. What did he say; I want the words? A. It is pretty hard to pick out the words now.

Q. I want it if you can give it. A. I do not believe I can give the exact words.

Q. As near as you can. A. We talked about Mr. Rea having a great deal of influence up here in the Assembly.

Q. Who talked about it? A. Mr. Johnson and myself.

Q. Did you say he would have a good deal of influence? A. He said he thought he would have a good deal of influence.

Q. What did Mr. Johnson say about it? A. I do not remember the remark exactly.

Q. What did you say? A. I said I thought he had a great deal of influence, because he had a great deal of influence all over.

Q. How do you know? A. He, being the Railroad Commissioner, has a great deal of influence.

Q. With whom? A. With a great many different men.

Q. Did you meet Mr. Rea then? A. No, sir; I did not. I only knew Mr. Rea. Everybody knows him in San José. He was raised there.

Q. Mr. Johnson did not know him? A. No, sir; he did not know him.

Q. Then he is one that did not. Did you tell Mr. Johnson that you knew Mr. MacKenzie, on that occasion? A. Yes; I told him that I knew Mr. MacKenzie.

Q. Did Mr. Johnson say that he knew Mr. MacKenzie? A. He said he knew who he was, and had never met him but once.

Q. He did not say he knew him once, until you mentioned his name? A. No, sir; he met him once election day.

Q. He met him on election day? A. Yes.

Q. And told you then that he knew him? A. Yes.

Q. How did it happen that you introduced him to Mr. MacKenzie when you knew he knew him? A. It was dark there; we couldn't hardly see each other.

Q. That was the reason? A. Yes.

Q. You introduced him because it was dark? A. Yes.

Q. Did you introduce him to Mr. Slagts? A. Yes, so he could distinguish the two gentlemen apart.

Q. Did he know where MacKenzie's office was? A. No, he did not.

Q. Did he know where Mr. Rea's office was at that time? A. No, sir; he did not.

Q. Did he tell you so? A. Yes, he told me so.

Q. Why was it necessary for you to introduce him to MacKenzie? A. He wanted to see Mr. Rea.

Q. Was there a directory in San José? A. There might be; I do not know.

Q. Do you know whether Mr. Rea's name is down on the directory? A. I never looked at it.

Q. Was Mr. Rea so poorly known there in San José that Mr. Johnson could not find his office without your help? A. I believe not.

Q. Why was it necessary for you to make an appointment with Mr. Johnson at eight o'clock at night to take him down in the dark and introduce him to a man that he already had been introduced to—Mr. Johnson—and who was so well known in San José? A. To meet him.

Q. Couldn't he have gone there in the daytime without your help?
A. He did not want to go.

Q. Why didn't he want to go? A. Because they would denounce him.

Q. Who would denounce him? A. The people that supported him.

Q. Did you go in the dark? A. Yes, it was dark in there.

Q. Who did you think would see you in the dark going into Mr. Rea's? A. Nobody could see any one in the dark going in there.

Q. But he asked you to go along so he would not be seen? A. He wanted me to go along to meet Mr. MacKenzie.

Q. Was there anything mysterious about Mr. MacKenzie? A. No, sir.

Q. Was there anything that would prevent Mr. Johnson meeting him himself in the daytime? A. Yes.

Q. What? A. Because he is Internal Revenue Collector and he is out most every day—out to different stills.

Q. Could he not go to see him in the evening? A. Why, certainly.

Q. You knew that Mr. MacKenzie was Internal Revenue Collector?
A. Yes.

Q. How long have you known Mr. MacKenzie, and are you intimately acquainted with him? A. Not very.

Q. You say you knew Mr. Rea during this time? A. No, sir; I am not personally acquainted with Mr. Rea.

Q. But you did know MacKenzie? A. I did MacKenzie.

Q. Any money dealings with MacKenzie? A. No, sir.

Q. Never had any? A. No, sir.

Q. Never received any money from him? A. No, sir.

MR. BLEDSOE: Who are your employers? A. Garrell (?) and Hanks.

Q. Are you working there now? A. Yes.

Q. And have been there since last July? A. I haven't worked steady there, as we had some dull spells and I was laid off, may be, altogether six weeks.

MR. McPIKE: It was through your intervention that Mr. Johnson was brought in contact with Mr. MacKenzie? A. Yes.

Q. You volunteered to go down there and wait that evening and meet these gentlemen, and take them to Mr. MacKenzie's office? A. I thought I would befriend Mr. Johnson, to meet him.

MR. BLEDSOE: Did I understand you to say that Mr. Johnson had first suggested the appointment to you? A. Yes.

Q. Was it after he had expressed a desire to meet Mr. Rea, that you volunteered to get him and Mr. Johnson together. A. Yes.

MR. McPIKE: Now, Mr. Connors, you know Mr. Kirkpatrick? A. I am not personally acquainted with him. He keeps a big store there in San José, and I know of him.

Q. Mr. Connors, did you tell Mr. Johnson, on this occasion when you went into his lumber yard to see him, that Mr. MacKenzie had told you that he understood that Johnson had said that he had intended to have Mr. MacKenzie and Mr. Kirkpatrick arrested for frauds on election day? You can answer that yea or no. A. No, sir.

Q. Did you tell Mr. Johnson, on that occasion, that Mr. MacKenzie had said that he wanted to see him—Johnson? A. I did not.

Q. Did he say to you that MacKenzie knew where his office was, and could find him—knew where his place of business was, and could find

him; that Mr. MacKenzie knew where Mr. Johnson's office was, and could find him when he wanted to see him? A. No, sir.

Q. Did you reply to that, "That will not do; you want to go to his office, because where you are it is too public?" A. No, sir.

Q. Or words to that effect? A. No words to that effect.

Q. Did he ask you where MacKenzie's office was? A. Yes.

Q. Did you tell him it was in the same building with Mr. Rea's office?
A. I did.

Q. Did he tell you that he did not want to go to Mr. Rea's office at all? A. He did not.

Q. Did he then ask you what Mr. MacKenzie wanted to see him about, and did you say that Kirkpatrick told him election night that Johnson was going to have him and a man by the name of Johnson, a butcher, arrested for buying votes on election day? A. He was going to have who arrested?

Q. Did Mr. H. H. Johnson say he was going to have Mr. Johnson, a butcher, and Mr. MacKenzie arrested, and Mr. Kirkpatrick arrested?
A. He never said anything to me to that effect.

Q. Did Mr. Johnson then say to you, "It is all right; I don't want to go, and if he, MacKenzie, wants to see me, he can come to my office?"
A. He did not.

Q. Or words to that effect? A. No, sir.

Q. Did you then say to him that "I will make an appointment for you to meet him to-night?" A. I told Mr. Johnson that I would make an appointment with Mr. MacKenzie, which I did.

Q. When did you make the appointment with MacKenzie? A. It is very hard to tell the exact date.

Q. What did you say to MacKenzie on that occasion? A. I said that for him to make an appointment with Mr. Rea—that Mr. Johnson wanted to meet Mr. Rea; he didn't want to meet MacKenzie, he wanted to meet Rea.

Q. He did not want to meet MacKenzie? A. No, sir.

Q. And you asked Mr. MacKenzie to make an appointment with Mr. Rea for Mr. Johnson to meet Mr. Rea? A. No, sir; not for me—for Mr. Johnson to meet Rea.

Q. Did you go to MacKenzie and tell him that Mr. Johnson would not go to see him, and he wanted him to come down there, for he wanted to see him? A. No, sir.

Q. The next day at noon, did you return to the lumber yard and see Mr. Johnson and say: "MacKenzie don't want to do that. Are you coming into town to-night?" A. I did not tell him that MacKenzie did not want to do that, but I asked him if he was coming to town to-night.

Q. Did you say to Mr. Johnson then, after he said he was coming into town to-night: "Will you meet me at Market and Santa Clara Streets at eight o'clock?" A. Mr. Johnson says: "Will you meet him?"

Q. Did you ask Mr. Johnson that: "Will you come into town and meet me at Market and Santa Clara Streets at eight o'clock?" A. No, sir.

Q. What did you say? A. I said: "We will meet here." He wanted to meet down town, and I met him between seven and eight o'clock.

Q. Who was with you. A. Mr. Slagts.

Q. Did you then say to him, when you met him there: "Come on down to Jim Rea's office" in the presence of Mr. Slagts? A. Yes.

Q. Did he, in the presence of Mr. Slagts, tell you: "No, I do not want to go to Mr. Rea's office?" A. He did; he did not want to go in the front way.

Q. Did he tell you there, in the presence of Mr. Slagts, or on the day you mentioned in Santa Clara County: "I do not want to go to Mr. Rea's office?" A. He said: "I do not want to go in the front way."

Q. Answer my question yes or no; did he say he did not want to go to Mr. Rea's office in Mr. Slagts' presence? A. No. Now I will explain. He said, "I don't want to go in the front way because people will see me and denounce me." So I went down there to the office and saw Mr. MacKenzie, and Mr. MacKenzie said Mr. Rea was not in to keep his appointment. I came back and told Mr. Johnson very near the same words as I could get at it. He said, "I don't want to see Mr. MacKenzie; I want to see Mr. Rea himself." Well, I told him, I says, "Mr. MacKenzie is Rea's private secretary, and whatever you say to Mr. MacKenzie will be the same as talking to Mr. Rea."

Q. Now did you know that anything said to Mr. MacKenzie would be the same as saying it to Mr. Rea? A. Mr. MacKenzie was Rea's private secretary.

Q. Did you know that Mr. MacKenzie and Mr. Rea was the same? A. He was wanting to meet Rea.

Q. But how did you know? A. Because any secretary would not keep anything from Mr. Rea.

Q. How do you know he would not? A. It is pretty hard to answer that question.

Q. But you assumed to know it? A. Yes, I assume to know. Any one would suppose a man, being a private secretary, would work in the interest of the man he was working for.

Q. Did Mr. Johnson tell you he was wanting to see Mr. MacKenzie? A. No, sir; not MacKenzie. He wanted to see Mr. Rea.

Q. Could you have stated to Mr. MacKenzie anything that Mr. Johnson told you, and then have Mr. MacKenzie state that to Mr. Rea? A. No, sir; that should not be proper, I should think.

Q. Why not? A. Telling two or three fellows might get the matter mixed up, and couldn't tell anything about it.

Q. Would not the same thing happen in two? A. No, sir; from one to the other they would be liable to get it snarled up.

Q. Then you did meet MacKenzie? A. After I came back with the proposition we went into the back way.

Q. You walked from Santa Clara Street to—— A. That was at the corner of Santa Clara and First where we met.

Q. Then you walked north on First Street? A. North on Market Street.

Q. To the gate? A. Yes.

Q. And Mr. MacKenzie was standing there to receive you? A. No, not at the gate, he was in back of the Electric Improvement Company.

Q. You found him there? A. Yes.

Q. And went back after Mr. Slagts and Mr. Johnson? A. No; Mr. Slagts and Mr. Johnson was a little ahead of me, because I had stopped. We had made a mistake at the gate in back of Springs. I opened the gate, and there was a big pile of dry-goods boxes, and I said to Mr.

Johnson, "We have got in the wrong gate," and I went and asked Mr. Dellwig, a restaurant keeper, where the gate was. I went into Mr. Dellwig's, and by that time they had found the gate, and was proceeding in ahead of me, and I followed in and caught up with them.

MR. BLEDSOE: You say you asked Mr. Dellwig where the gate was? A. Yes; I did not know myself where the gate was. I knew there was a back way to get in there.

MR. McPIKE: That was the back way to Mr. Rea's office? A. Yes.

Q. Had you ever been in that way before? A. No, sir; if I had, I would not have gone in this other gate.

Q. This, you say, was about eight o'clock at night? A. Yes; about eight.

Q. Was it dark? A. Yes.

Q. Is there an electric light near there? A. There is an electric light. I do not know as it was lighted. It was pretty dark in there, for the light was little on account of the shades of the building shading the light that could pass in there.

Q. Where is the nearest electric light to that place? A. Well, I never measured the distance.

Q. Where is it located? A. Located on the corner of Market and Santa Clara Streets. That is the electric tower.

Q. It is very light there, isn't it? A. Not sometimes.

Q. Were you with Mr. Slagts and Mr. Johnson when he first met Mr. MacKenzie, after he got through the gate and after you caught up with them? A. Yes; I introduced them. It was dark in there.

Q. What did you say to Mr. MacKenzie? A. I said: "This is Mr. Johnson, Mr. MacKenzie and Mr. Slagts."

Q. What did MacKenzie say? A. Mr. MacKenzie went in, took Mr. Johnson, and went into this store-room where Mr. Slagts and I sat, and he took Mr. Johnson into the private room, and I did not hear any of the conversation.

Q. Did he simply take him in, or catch him by the arm and take him in, or did he invite him in? A. He invited him in. Mr. MacKenzie went in ahead, and Mr. Johnson followed him.

Q. What was the first word Mr. MacKenzie said to Mr. Johnson in your presence? A. I cannot remember the first word.

Q. What was any word he said to him? A. He said: "How do you do?"

Q. What else? A. That is all I heard. They might have said something, but I do not remember. I did not think I would have to come up here, or I would have written it down.

Q. How long did they remain together? A. About twenty-five minutes or a half hour.

Q. Why would you have written it down? A. If I had known I was coming up here I would have written it down, so I could give it to you straight.

Q. So you haven't given it to me straight? A. I have given it as straight as I could.

MR. BLEDSOE: You say that you had been in the habit of going out into the lumber yard and talking with the men? A. Yes, I have been in the habit of going out there.

Q. Can you name any of the men? A. I cannot name any of the men, no; I know them all by sight. I shoe horses in there for them, but I do not know the names of any of them.

Q. Does the back door of your shop enter into the lumber yard? A. Our back door opens out there, and Mr. Meserve has lumber on our premises.

MR. RICHARDS: Mr. Meserve owns both premises? A. Where we are, no; Mr. Bethell owns the building.

MR. BLEDSOE: You say that you and Mr. Johnson had something to say about different candidates for United States Senator? A. We talked about different ones.

Q. Did Mr. Johnson say anything about his preference, or whether he had any preference for United States Senator? A. No, he did not; he didn't say anything about it. He had not chosen any United States Senator.

Q. Did he say that, or did he simply not say anything? A. We had talked about it, and he said he had received a good many letters.

Q. I mean at the very time you were talking with him in the lumber yard. A. No, sir; he did not. We talked about Foote and talked about White.

MR. CHAIRMAN: Who talked about Mr. Foote and Mr. White? A. Me and Mr. Johnson.

MR. RICHARDS: When you met Mr. MacKenzie to make the appointment to meet Mr. Johnson, what did you say to Mr. MacKenzie about Mr. Johnson; state the whole conversation. When you went down to meet Mr. MacKenzie in order to make the appointment the first time?

[Objected to, and objection sustained.]

MR. BULLA: Did you say you asked this restaurant keeper, Mr. Dellwig, how to get in there? A. Yes.

Q. Did you say where you wanted to go? A. No, sir; I went up and spoke to him, and said "Mr. Dellwig, is there any way to get in the back yard," and he said "The gate is right back."

Q. You did not tell him what you wanted to go there for, and what the object of your visit was? A. No, sir; I knew Mr. MacKenzie would be there to meet us when I got to the back yard.

Q. You did not tell Mr. Dellwig why you wanted to go in the back yard? A. No, sir.

MR. McPIKE: When was the first conversation, nine or ten days after election? A. It is pretty hard to recollect the exact days; somewhere about that time.

Q. No longer than that? A. I do not think it was any longer than that.

Q. What do you know about it? A. That is all I know.

Q. Your best recollection is it was nine or ten days after? A. That we had the conversation?

Q. He told you that Mr. Foote and Mr. White were candidates? A. That is, supposed they were candidates. Yes; Mr. Foote and Mr. White.

MR. BULLA: I think you stated that after Mr. MacKenzie and Mr. Johnson had their interview, that you, and Mr. Johnson, and Mr. Slagts went away together? A. Yes.

Q. Where did you go? A. We went down to the corner, and I bid Mr. Slagts and Mr. Johnson good by.

Q. Any other conversation? A. When we were going out I asked him, I said, "Did you make an appointment?" and he said, "Yes."

Q. Make an appointment to meet Mr. Rea? A. Yes.

Q. Did he say when? A. No, he didn't say anything about it.

Q. Did he say anything about what the object of the appointment was? A. No, sir; he did not tell me the object of the appointment.

MR. HENDRICKSON: When you first talked with Mr. Johnson in the lumber yard, was he there alone? A. Yes, we were alone.

Q. Where were the other men who worked there? A. They were seated a little ways from us. This conversation was private between me and Johnson.

Q. Did you step aside? A. Yes, we stepped aside and had a private conversation.

Q. What was Mr. Johnson doing when you first went out into the lumber yard? A. He was not doing anything; it was noon hour.

MR. McPIKE: When were you subpoenaed in this case? A. I suppose I was subpoenaed in San José, but I did not get the subpoena until I got up here.

Q. Who gave you the subpoena up here? A. The Sergeant-at-Arms. I suppose I was subpoenaed in San José by Mr. Richards.

Q. Who told you? A. Mr. Richards told me that he would call on me, and that I should come up here.

Q. And you came on his word? A. Yes.

Q. Did Mr. Richards tell you you were a witness, also? A. No, sir.

Q. You never received any process of any kind from the State, but came here on a telegram from Mr. Richards? A. A telegram from Mr. MacKenzie.

Q. Have you the telegram? A. No, sir. Mr. Richards told me that he would send for me.

Q. When? A. When he was down at San José.

Q. What date? A. I do not know what date it was.

Q. You do not recollect that—how long ago was it? A. If I had known they hadn't the subpoena here I would not have come up. I supposed I was subpoenaed down below, or I wouldn't have come up here.

Q. You do not like it? A. No, I do not like to be in any kind of a scrape like this; it don't suit me very well. It ain't very nice.

MR. CHAIRMAN: Have you been subpoenaed here? A. Yes, I was subpoenaed here by the Sergeant-at-Arms.

MR. McPIKE: In Sacramento? A. Yes.

Q. Who were you with when you were subpoenaed by the Sergeant-at-Arms? A. I do not know who was standing around. I was subpoenaed in this room.

Q. Right here? A. No, out there by the curtains.

Q. When? A. Yesterday.

Q. And you came at the request of Mr. Richards in answer to his telegram? A. Yes.

Q. You had a conversation with Mr. Richards about this case then before you were subpoenaed. A. He just spoke that he was going to send for me. He never talked it over.

Q. Did you never mention this matter that you have spoken of to-night to any one? A. No, sir.

Q. You never mentioned this conversation at all to any one? A. Which conversation do you mean?

Q. Anything that you have related in any of these conversations. Did you ever relate any of them to any one before you came here in

response to Mr. Richards' telegram? A. Well, I have talked a few of the matters over, but I never talked as much as I have to-night; I said more to-night than any time.

Q. Who did you talk to? A. I spoke to Mr. Richards, of course, Mr. Richards being the attorney.

Q. Who told you he was the attorney? A. I saw it in the paper.

Q. And you went to Mr. Richards and spoke to him? A. No, sir; I did not.

Q. Did he come after you? A. No, sir; he did not.

Q. You met, merely, then? A. I met him in the Electric Improvement Company's office.

Q. Had you any business in the Electric Improvement Company's office? A. No, sir.

Q. That is Mr. Rea's office? A. Yes.

Q. You had no business there? A. No business at all, only I would drop in there to see MacKenzie once in awhile—merely friendship.

Q. And you happened to drop in there to see MacKenzie when Mr. Richards ran across you. A. Mr. Richards was there.

Q. How did Mr. Richards come across this conversation that you had with Mr. Johnson if you did not tell him? A. That is pretty hard to tell.

Q. If you had never related this conversation to any one until you came up here how was it that Mr. Richards asked you to come up here to Sacramento? A. Mr. MacKenzie told him; of course he knew all about it.

Q. How do you know? A. Or he wouldn't want me to come up.

Q. How do you know; did Mr. MacKenzie tell you? A. I do not know.

Q. It is a mystery. A. It is a mystery.

Q. Who paid your expenses to come up here? A. I paid them myself.

Q. Simply at the request of Mr. Richards? A. Yes. I supposed I was subpoenaed or I would not have come. When an officer tells you he will call on you, I suppose it will be taken for granted. Mr. Richards, I believe, is an officer of the law.

MR. HENDRICKSON: Have you any business relations with Mr. Rea? A. No, sir; none at all.

Q. Have your employers? A. No, sir.

Q. Has he ever sent horses to the blacksmith shop to be shod, or carriages to be fixed? A. No, sir. He has his work done in another shop.

MR. CHAIRMAN: Will you state to the committee whether prior to this visit which you have related, to Mr. Rea's office, whether prior to the time of that visit you ever had any conversation with Mr. MacKenzie in regard to what had passed between you and Mr. Johnson? A. The question is this way: Would Mr. Johnson have told me if I said to him—

Q. Had you ever had any conversation with Mr. MacKenzie in regard to any conversation you had previously had with Mr. Johnson? A. I do not believe I ever did. I spoke on a good many subjects, but I do not believe I ever told him anything exactly that Mr. Johnson and I had spoken together about.

MR. BULLA: You stated that you had talked with Mr. Richards about the case, about this matter? A. He knew that I knew something about it.

Q. When did you first talk with him about it? A. When I happened to meet Mr. Richards in the Electric Improvement Company's office.

Q. Can you approximate the day? A. I believe it was Sunday.

Q. Last Sunday? A. Yes.

Q. Ever talked with him before that? A. No; never before.

Q. Just happened to meet him? A. Yes; just happened to meet him.

Q. Who began the conversation, you or Richards? A. I do not know.

Q. Do you remember who spoke about it first? A. Mr. MacKenzie and I were talking about it.

Q. You and Mr. MacKenzie were talking about it when Mr. Richards came in? A. Yes.

Q. And he joined you there? A. Yes.

Q. And you all talked about it? A. Yes.

MR. MCPHIE: Who besides Mr. Richards was in the office? A. Just us three.

Q. You and MacKenzie and Mr. Richards? A. Mr. MacKenzie and I were in there, sitting down and talking, and Mr. Richards happened along in there.

Q. What time was it in the day? A. I can give just exactly the time. It was twenty minutes to eleven. Just exactly twenty minutes to eleven, because I glanced up at the clock.

Q. Did you agree to meet Mr. MacKenzie there? A. No, sir; I did not agree to.

Q. How did you happen to go there on Sunday? A. I drop in to see MacKenzie every once in awhile, in fact, every night I am in there, talking with Johnnie.

Q. How did you happen to go there on Sunday. A. I always go there Sunday. Very near every Sunday I go there.

Q. What time? A. Sometimes in the morning, and sometimes night, and sometimes I have been in the office as late as eleven o'clock at night.

Q. Then you and MacKenzie are very intimate? A. We were not intimate—he didn't tell me all he knows, and I didn't tell him all I know.

MR. CHAIRMAN: I want to ask you, Mr. Conner, after the time when you went to Mr. MacKenzie's office, or Mr. Rea's office, with Slagts and Johnson, how long after that time, or any time after that time, did you have any conversation with MacKenzie in regard to what your conversation with Mr. Johnson was? A. No, I believe I did not. I had another conversation with Mr. MacKenzie. I couldn't call any dates, because I did not see Mr. MacKenzie for five days afterwards.

Q. Did you ever have any conversation with MacKenzie, as to what passed between you and Mr. Johnson at any time? A. As to what he said to Mr. Johnson?

Q. No, the conversation that you and Mr. Johnson had in regard to this appointment and this meeting at that office—did you ever have any conversation with Mr. MacKenzie, at any time? A. I understand the question, now.

Q. Not what he said—in regard to what your conversation was with Mr. Johnson before you went to the office with him. You said you met Mr. Johnson in this lumber yard, and that you, and Mr. Johnson, and Mr. Slagts went to Mr. MacKenzie's office together. A. Yes.

Q. Then you had previously had a conversation with Mr. Johnson in the lumber yard? A. Yes.

Q. Now, after that time, did you ever have any conversation with Mr. MacKenzie in regard to the conversation with Mr. Johnson? A. I do not know; I would not say.

Q. You do not know whether you did or not? A. I do not know. It is no use to say yes, or no, because I do not know.

Q. Did you ever have any conversation with Mr. Richards? A. No, sir; never knew Mr. Richards until I met him Sunday.

MR. BULLA: Do you mean now to say that you had no conversation with Mr. MacKenzie about these talks you had with Mr. Johnson, until last Sunday? A. The question was, if I knew Mr. Richards before Sunday.

Q. He asked you whether you ever had any conversations with Mr. MacKenzie about what you had said to Mr. Johnson subsequently, that is, after the time you had your meeting? A. I talked with Johnnie before that. Yes, we talked before that.

Q. Before last Sunday? A. Yes; we just happened to talk about what I thought of Mr. Johnson, and what he thought of him, and one thing or another.

Q. But you say it did not occur for at least five days? A. Five days after he came along.

Q. And then you had a conversation with him? A. He asked me what I thought of Johnson. About five days; I would not say for sure, four or five.

Q. On this occasion of your congratulating Mr. Johnson, was it in company with his yardmates that you addressed him? A. No, sir; it was not. He was standing at the lumber pile; you know how lumber is all piled up.

Q. You testified that you went out frequently to talk with his yardmates? A. Yes.

Q. And this was the first occasion on which you held any conversation with Mr. Johnson? A. I made the appointment. At the time I had the first conversation I hadn't made the appointment to meet Mr. MacKenzie. The first meeting I met him was in the yard, and I congratulated him on the hard fight he had.

Q. Did you make an appointment for that meeting with him? A. No.

Q. You say you frequently went into the yard to talk with the men? A. Yes.

Q. That is, his yardmates? A. Yes.

Q. Why did you not address the yardmates on that occasion? Were they not all together? A. I think Mr. Johnson came out from piling some lumber, and they were sitting down eating some dinner.

Q. But, you say it did not occur for at least five days? A. Five days after he came along.

Q. And then you had a conversation with him? A. He asked me what I thought of Johnson—about five days. I would not say for sure—four or five.

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Q. You say you frequently went into the yard to talk with the men? A. Yes.

Q. That is, his yardmates. A. Yes.

Q. Why did you not address the yardmates on that occasion; were they not all together? A. I think Mr. Johnson come out from piling some lumber, and they were sitting down eating some dinner.

Q. Were they sitting together? A. He was not with his yardmates. He was, may be, twenty feet away from them, and when we started in to talk.

MR. HURLEY: How did Mr. Johnson find out that you were acquainted with Mr. MacKenzie? A. I told him I was acquainted with MacKenzie.

Q. That was at your first meeting? A. I do not think that I said anything about that on the first meeting. I do not think we had any conversation about MacKenzie the first meeting, or anybody the first meeting. It was the second meeting.

MR. McPIKE: The first meeting is the one you referred to that you went to the lumber yard and congratulated him? A. Yes.

Q. Do you want to be understood as swearing that he did not at the first meeting when you went to congratulate Mr. Johnson on his election and his hard fight that you said anything about Rea and MacKenzie to him? A. I do not think I said anything at all.

Q. It is not what you think, but what you know? A. I am pretty positive. We might have said something.

Q. That is what Mr. Hurley wanted you to refer to? A. I am pretty positive that nothing was said at that meeting.

MR. CHAIRMAN: You said nothing at the first meeting about knowing Mr. MacKenzie? A. No; I do not think there was at the first meeting. I am pretty positive.

MR. McPIKE: When you were at the office Sunday last, and casually happened to meet Mr. MacKenzie, did you talk with Mr. Richards about this case? A. I believe I stated I did.

Q. Was it before or after you made the statement that he asked you to come up here? A. It was after.

Q. Was Mr. MacKenzie there present? A. I believe MacKenzie was.

Q. Don't you know? A. Yes, Mr. MacKenzie was; I will say yes.

Q. Did MacKenzie take part in the conversation? A. I do not think he did. He might have chipped in once in awhile.

Q. But the conversation took place between you and Mr. Richards? A. Yes.

Q. How did it happen that Mr. Richards first began the conversation, or did you? A. No, I cannot say if he started the conversation, or I started it.

Q. Did Mr. Richards take any notes of what you said? A. I do not think he did, unless he took it in his head.

Q. Did not make any notes? A. No, sir.

Q. Did MacKenzie? A. No, sir.

Q. Did you? A. No, sir.

Q. Did you give Richards a written statement of what your testimony would be? A. No, sir.

Q. Did I understand you to say that you did not know Mr. Rea? A. I did not know him until I came up here, to be personally acquainted with him. I knew who he was. Everybody knows him there in San José.

Q. But you did not meet him until you came here? A. No, I did not.

MR. BULLA: You have met him since you came here? A. Yes.

Q. Had any conversation with him? A. Yes.

Q. On this subject? A. Yes.

Q. Told him all that you could testify to, did you? A. Yes.

Q. Did he tell you what he knew about it too? A. No, sir. He asked me what I knew about it.

Q. And you told him? A. Yes, just exactly what I said here.

MR. BLEDSOE: You said you made this appointment in the lumber yard when you were talking to Mr. Johnson and made the arrangement to make the appointment? A. Yes, I made the arrangement with Mr. MacKenzie.

Q. Why did you say awhile ago that you did not say anything about Mr. MacKenzie or Mr. Rea? A. Not at this first meeting.

Q. At what first meeting? A. The first time I met Mr. Johnson, when I congratulated him.

Q. Wasn't that the time you made the arrangement? A. No, sir; it was the next time I met him.

Q. Where? A. In the same lumber yard. That is what I have been trying to get out.

MR. HURLEY: Was Mr. Johnson's yardmates there then at the second meeting? A. I do not think they were; I wouldn't say for certain.

J. D. MacKENZIE.

Called and sworn, testified as follows:

MR. RICHARDS: What is your name? A. J. D. MacKenzie.

Q. Where do you live? A. In San José.

Q. How long have you lived in San José? A. All my life, thirty-six years and a little over.

Q. What is your present occupation? A. I am Internal Revenue Gauger.

Q. You were in San José during last November and December? A. I was.

Q. Did you ever meet Assemblyman H. H. Johnson there? A. I did.

Q. Do you know one Harry Conner? A. Yes.

Q. State the circumstances under which you came to meet Assemblyman H. H. Johnson. A. A few days after the election, probably ten or twelve days, as near as I can remember, Mr. Conner came into my office and told me that Mr. Johnson wished to see Mr. Rea.

Q. State whether any appointment was made? A. There was an appointment made.

Q. Who was the appointment with you to meet? A. Mr. Johnson.

MR. BULLA: Do you say this appointment was made for you to meet Mr. Johnson? A. Yes.

MR. RICHARDS: Where was the appointment to be kept, and when? A. In an evening or two in my office.

Q. Let us understand where your office is with reference to the office of the Electric Improvement Company? A. My office is in the same building as the Electric Improvement Company. My insurance office is where the revenue office is, and in the evening I use the Electric Improvement Company's office for the lights.

MR. BLEDSOE: At that time did you sustain any business relations to Mr. Rea? A. No, I have no business relations with him at all.

Q. Were you or were you not his private secretary at that time? A. No. Sometimes Mr. Rea will give me a letter and ask me to answer it for him. I would not consider myself his private secretary.

Q. Were you ever his private secretary? A. No, I never have been employed by him at all.

MR. RICHARDS: You say the appointment was made to be kept in the office? A. Yes.

Q. In an evening or two after this? A. Yes.

Q. Was that appointment kept? A. He did not come the first night he agreed. That is, Mr. Conner made the agreement.

Q. An evening or two after that you say he came? A. Yes.

Q. How did he come into the office? A. He came in through the rear way.

Q. What time in the evening was it when he came? A. Between seven and eight.

Q. Who came with him? A. Mr. Conner and Mr. Slagts. I was introduced to both, as near as I can remember.

Q. After being introduced to Mr. Johnson and Mr. Slagts, where did you go? A. We went into the private office.

Q. Who went into the private office? A. Johnson and myself.

Q. Where did Mr. Conner and Mr. Slagts remain? A. They remained in the outer room.

Q. Did you on that evening have any conversation with Mr. Johnson? A. Yes.

Q. Well, now, as near as you can remember that conversation, how did he begin, and what was it? A. We sat down on the sofa and I said, "Well, we might as well commence and talk right away. You want to see Mr. Rea, and I understand you are going up to the Assembly for what is in it, I have been informed." And he said "Yes."

MR. BLEDSOE: When you said we might as well commence and talk right away, and I understand you want to see Mr. Rea, did he answer anything to that? A. Yes, he wanted me to arrange a meeting.

MR. RICHARDS: Was there anything said by him about his going up to the Assembly? A. He said he had been elected, and only expected to be elected once, and he was going up there for what there was in it.

Q. Did you make an appointment with him to meet Mr. Rea? A. I told him I would arrange an appointment with Mr. Rea.

Q. Was there any other conversation at length on any other subject? A. He said that Mr. Rea was a Railroad Commissioner, and he had a fight up there, and he would want some friends.

Q. State whether anything was said in that conversation with reference to the Traffic Association? A. Yes, he said he had a fight with

the Traffic Association, and I said, "You signed the agreement with them before election?" "Yes," he said, "I signed everything they brought me."

Q. State everything that occurred between you and Mr. Johnson. A. As near as I can remember, I said, "You signed an agreement with the Traffic Association," and he said, "Yes, I signed everything they brought me." Then I said, "Well——"

Q. Do you remember what next occurred? A. Then the conversation went on in a desultory sort of a way about different propositions, and he said he was out for what was in it, and he wanted to meet Mr. Rea.

Q. You spoke about various propositions; what proposition do you speak of that the conversation went on about? A. We spoke about the United States Senator.

MR. BULLA: Cannot you tell just what was said?

MR. CHAIRMAN: Was there anything said about United States Senator? Tell all that was said. A. I want to try and get it concisely as possible.

MR. BLEDSOE: We do not want it concisely, we want it exactly.

MR. CHAIRMAN: State in your own way, the language, as near the substance of the conversation, as near as you can, and the words used.

MR. RICHARDS: Do you remember any of the desultory conversation? A. I spoke of the Senatorial chances. There was something about that time; there was a little doubt whether all the Assemblymen had been elected or not, and we spoke of the different chances of the different aspirants to office, and the main proposition of the evening was that he wanted to see Mr. Rea for the purpose of securing money for his services as Assemblyman.

Q. What did he say about that? A. Well, he said that his health was good, and he only expected to run once.

Q. What led up to that remark? A. Well, I just said a little while ago that he said he was out for the stuff.

Q. What made him say that; did you ask him if he was out for it? A. I said we might as well commence and talk right out; "I understand that you are going up to Sacramento for what there is in it," and he said yes; he could only be elected once.

Q. And what reply was given? A. He was not going up there for his health.

MR. RICHARDS: Now this conversation altogether lasted ten or twelve minutes? A. About that; I could not be positive to a few minutes.

MR. BULLA: What remark did you make when he made that proposition or suggestion? A. I didn't say anything that I recollect.

Q. You were perfectly silent? A. I might have made some passing remark, but I cannot say that I can remember it.

Q. Did he stop then? A. I do not know whether that was the last of the conversation or middle of it; and that he wanted me to make an appointment with Mr. Rea for him.

MR. BLEDSOE: Did he ask you to do that? A. We spoke about the last election. He said that he had had a hard fight, and he had spent all the money he had, and told me where he had got a vote from a friend of mine—how he got it—that was one part of the conversation.

Q. Before you agreed to make an appointment with Mr. Rea did Mr. Johnson ask you to do that for him? A. Yes, he said he wanted to see

Mr. Rea. He came to see me for the purpose, was my understanding of it. He said that Mr. Rea was a member of the Railroad Commission, and had a fight up there.

MR. CHAIRMAN: Do you remember anything else in that conversation that you have not already stated? A. That is all.

MR. RICHARDS: You think that is about all the conversation you remember? A. That is about all, I think.

MR. CHAIRMAN: Mr. MacKenzie, as I understand you, Mr. Johnson said he was coming up here for what was in it. Did he say anything about anybody else in connection with this proposition that he was supposed to be making? A. I do not remember anything just now. I do not recollect it at the present time, about anybody being connected with him.

Q. Yes, anybody else going to the Assembly—did he say he had any others besides his own vote, or anything of that kind? A. I think he did say there were some others.

Q. You are not very positive about that? A. Yes, I am positive. This came in when he spoke of the Traffic Association, and there were some others.

Q. What did he say about it? A. He said there were some others with him when he said his health was good, and he was out for what he could get.

Q. He was? A. Yes, and I asked him how many votes there were, or something like that, or how many people there would be against the Railroad Commissioners, or how many he could get that way, and he said there were some others, as near as I can remember.

MR. BULLA: Did he say anything about expecting to make anything on the Traffic Association? A. He said he had signed their agreement, and it didn't make any difference about that. At that point there must have been something said, I would have doubts about Mr. Rea having anything to do with it, or Mr. Rea would have some doubts in regard to talking to him if he signed the agreement against him. If he signed an agreement with the Traffic Association which was against the Commission. He said it didn't make any difference what other pledges he signed.

Q. Did he give any reason why he signed those? A. No, sir; he said he signed them.

Q. Gave no reason? A. No, sir.

Q. Did he say anything about making anything out of the question of United States Senator? A. Yes, he did.

Q. What did he state about that? A. He said that that was the best of all of them; that that was the best financial proposition that there was; that he thought that was the best financial proposition that there was.

Q. Did he make any intimation of what he was willing to do? A. There was no amount of money specified; no quantity of money specified in our conversation at all.

Q. I think you said that he also referred to the fact that Mr. Rea had a fight on his hands and would need a friend? A. Yes.

Q. Was there any amount intimated as to what he would expect to get out of that? A. No, sir; no amount.

Q. Was any amount named for any purpose? A. No, sir.

Q. Did you agree with him that there was a pretty good opportunity?

A. I didn't know anything about it, and I didn't care at all. I never have been a member, and do not know anything about it.

Q. It was a matter of pretty general information that the Traffic Association had a fight on hand; I should say, that the Commission had a fight on hand? A. Yes. The newspapers picked it up.

Q. You are pretty intimate with Mr. Rea? A. Yes, very intimate.

Q. You knew the Commissioners had a fight on hand? A. Yes.

Q. Then you did know something about it? A. I knew from the press that there was a fight against the Commission.

Q. You knew there was to be a pretty close contest over the United States Senator? A. Yes, I inferred there would be from the nature of the political situation that spoke of the chances of White and Foote.

Q. Anything else? Did you speak of the chances of the Republican candidate? A. No, I do not think so.

Q. What are your politics? A. Republican, sir.

Q. Did you know that Mr. Johnson was a Democrat? A. I knew it very well; yes.

Q. Did he intimate to you that he might be induced to vote for a Republican for United States Senator, or anything like that? A. I think there was, but I could not remember every little thing. We jumped from place to place.

MR. BULLA: Was there nothing said that you now remember in regard to what his object was in meeting Mr. Rea? A. No doubt of it. I inferred from the whole thing, I understood, that he wanted to meet him for the purpose of getting money for his vote.

Q. And you went ahead and made arrangements? A. Yes.

THE CHAIRMAN: You say you inferred there must have been something, but inference would hardly be good evidence. Cannot you state positively whether there was anything said which would enable you to make that statement? A. He said he was coming up for what was in it, for the stuff that was in the office, so he could make money out of it, and he wanted to see Mr. Rea, and for me to arrange a meeting with him, and Mr. Rea had a fight on hand with the Traffic Association.

Q. Did you consider it was just the right thing for you to do, for you to go on and make that kind of arrangement? A. I reasoned this way, that Mr. Rea was a friend of mine, Mr. Johnson was an Assemblyman, and Mr. Rea had a fight; I thought if Mr. Rea met Mr. Johnson I thought they would come to an understanding. I didn't think Mr. Rea would put up anything.

Q. You were willing to help it that far? A. Not to pay him.

Q. You said you knew what the object was in making the meeting? A. Yes, for Mr. Johnson, that he wanted to meet Mr. Rea.

Q. Did you say anything to Mr. Johnson about this being rather a dangerous thing or wrong thing for him to get into, in making such propositions as that? A. No, sir.

MR. BLEDSOE: Such things are not to be considered very wrong in Santa Clara politics, in Republican ranks? A. I do not know that it is different from any other people's politics. I did not assure Mr. Johnson anything and hadn't anything to assure him in making the meeting. I wished to make the meeting so Mr. Rea would know what he had to go against.

MR. McPIKE: That was your object in making the meeting with Mr. Rea? A. Yes, sir.

Q. Who commenced the conversation that led up to this statement about coming up here to make money, you or Mr. Johnson? A. Mr. Johnson.

Q. You say you took him in and sat down on a sofa? A. Yes; I said, "You might as well talk right out; I understand."

Q. What was the first thing you said when you took him to the sofa? A. I said "We might as well commence and talk right out, if you want to see Mr. Rea, and I understand you are elected Assemblyman, and you are going up there for what is in it." I had been informed of that.

Q. Who informed you? A. Mr. Conner.

Q. Before that he had not said anything about coming up here for what is in it? A. He answered my question by yes. When I said we might as well commence and talk right out, I said, "You are going up for what is in it," and he said, "Yes; my health is good; I am only elected for once, and I am going up for what I can make out of it."

MR. BLEDSOE: How long have you known Mr. Conner? A. I have known him around town and county for quite a number of years.

Q. Quite intimate? A. No, I wouldn't call him an intimate friend.

Q. Does he drop into your office frequently? A. More since the election.

Q. Since the matter of Mr. Johnson came up, when did he first speak to you about that matter? A. I think about ten or twelve days after election.

Q. After you met Mr. Johnson in your office? A. It was about ten or twelve days after election that Mr. Conner spoke to me about Mr. Johnson; it might have been eight or nine.

Q. Did he tell you anything about a conversation he had with him anywhere? A. He said Johnson was out for the "stuff," and wanted to see me, to make an appointment with Mr. Rea or myself; I do not remember the exact date.

MR. RICHARDS: I understand that you did make an appointment with Mr. Rea? A. I did.

Q. You do not know whether that appointment was kept. Do you know, as a matter of fact, whether the first appointment that you made with Mr. Rea was kept; did Mr. Johnson ever tell you whether it was kept or not? A. He told me it was not kept.

Q. Did you see Mr. Johnson after this time, a number of times? A. I did.

Q. I will call your attention to any occasion on which you saw him when Mr. Bethell was in the office. Do you remember any such occasion? A. I do.

Q. What occurred on that occasion? A. I came in the office one day, I think about noon. Mr. Johnson was sitting in one of the chairs on the outside of the counter. I spoke to him, and said, "Come on inside," and went back in the same room where this first meeting of ours took place. I do not remember what we talked about.

Q. Where was Mr. Bethell? A. Well, Bethell was there in the office, or came in immediately afterwards.

Q. What took place in your presence with reference to Mr. Bethell? A. I think Mr. Bethell was not in the office, because Mr. Johnson and I went into the back room, the same back office, and he came in. I opened the door and Mr. Bethell came in, and I asked him where Mr. Rea was, and he said he had just left him, and I said, "Mr. Johnson is

here and wants to see him," and he went out and came back and said Mr. Rea had gone away; he didn't say where he had gone.

Q. Did Mr. Johnson go away then? A. Mr. Johnson went away.

Cross-Examination.

MR. MCPIKE: You say you are an intimate acquaintance of Mr. Conner? A. No, sir; I would not consider him an intimate acquaintance.

Q. Does not he run up to see you there two or three times a week? A. Since this last election I see him much oftener than ever before.

Q. About how often, do you suppose? A. Since last election?

Q. Yes. A. I think, I could not be positive, may be not more than two or three times, or twice a week, I would say.

Q. Would he come by his own volition, or at your request? A. Came at his own volition.

Q. Did he ever come to your office by request? A. I cannot remember whether he ever did or not. I could not be positive whether he ever came at my request or not.

Q. Did you ever tell him that you would be in your office at any particular time, and that you would like to meet him there? A. I might have done so.

Q. When? A. I could not tell you. I say I might have done so; I could not be positive whether I did or not.

Q. Isn't he a kind of a hanger-on around your office? A. No, sir; he is not.

Q. Doesn't he go there on Sundays? A. He comes in on Sunday. If I am in town on Sunday my office is always open.

Q. Doesn't he go up there every Sunday? A. No, sir; he does not.

Q. Was he ever there on Sunday? A. I could not be positive. He might have; yes.

Q. Not that you recollect; nothing particular that called your attention to his being there on Sunday? A. I cannot remember anything at the present time.

MR. BLEDSOE: Was he there last Sunday? A. I think not; excuse me a moment; I was in my office last Sunday for a short time; I had not been well; I was confined to my room for three or four days; I was in the office, but I wouldn't swear whether Conner was there or not.

MR. MCPIKE: There was nothing took place there that would attract your attention to him if he was there? A. I do not remember anything just now.

MR. BLEDSOE: Cannot you recollect any conversation that you had with him last Sunday? A. No, sir; he might have been there; I cannot say positively.

MR. MCPIKE: You are a United States Gauger? A. Yes.

Q. When were you appointed such? A. It was in August or September, 1889.

Q. Is Mr. Rea on your bond? A. I think he is. I know he is.

Q. What district were you appointed for? A. The First District, fifth division.

Q. You gauge other places out of San José? A. Santa Cruz.

Q. Have you a buggy of your own? A. No.

Q. Do you borrow Mr. Rea's buggy sometimes when you go out? A. Never.

Q. Never? A. I never have.

Q. Does Mr. Rea sign any of your duplicate receipts that you get from the Government? A. No, sir.

Q. Never has signed one for you? A. No, sir; no other man.

Q. Are you under any other obligation to Mr. Rea than politics? A. I owe a small balance of money yet on a note that I am paying off.

MR. BLEDSOE: If there had been any conversation between you and Mr. Conner last Sunday, you would have been apt to remember it? A. I do not know as I would; I was not very well. I did not have an appointment with him.

Q. If you had a conversation with him there last Sunday, with the object of finding out what he knew about this, or of refreshing his memory about this, you would be apt to remember it now? A. It runs in my mind, since you have asked me, that it is possible I did. I don't want to swear positively, because I am not sure.

Q. Do you not remember? A. I am not trying to keep anything from you, but I am not positive.

MR. MCPIKE: You have stated with great particularity the conversation that took place between you and Mr. Johnson on your first meeting with him? A. I do not think I was very particular.

Q. Cannot you remember what took place last Sunday? A. I remember going up town. I was up town an hour and a half, may be two hours, and I know I was in the office.

Q. What did you go there for? A. I went to get some blank reports to make my payroll out.

Q. You did not go there on purpose? A. I do not remember that I did; no, sir.

Q. You do not know whether you met Mr. Conner? A. No, sir; I do not think so.

Q. You did not see Mr. Conner there? A. I wouldn't be positive whether I did or not.

Q. Mr. Richards has an office in that building. Did Mr. Richards meet you in your office last Sunday? A. I remember it now; yes.

Q. And Mr. Conner, too? A. Yes, I think he was there.

Q. And didn't you go there, and this subject was begun and talked in the presence of Richards and Conner? A. Yes.

Q. Didn't Mr. Richards and Mr. Conner have a conversation about what Mr. Conner told you, and didn't you go there for that purpose—of going over these things, and for the purpose of letting Mr. Conner know he was a witness here, and didn't you chip in during the whole of the conversation? A. I do not remember chipping in all the time.

Q. Well, part of the time? A. No.

Q. Do you recollect any such conversation as Mr. McPike asked you about? A. I really did not remember it when I was first questioned about it. I really do remember now that he did come in there.

MR. MCPIKE: How did Mr. Richards happen to come to the office? A. I do not know.

Q. How does it happen that Mr. Richards, Mr. Conner, and yourself, three witnesses in this case, met at your office Sunday morning, in San José, and talked this over? A. I do not know.

Q. It was simply a casual meeting? A. On my part I think it was.

I won't be positive whether Mr. Richards and Mr. Conner spoke about the matter of meeting. I know I went to get some blanks to make out my payroll.

Q. What business had Mr. Richards in your office last Sunday? A. I do not know.

Q. He came there? A. Yes.

Q. Did he make any explanation of his presence? A. He is out and in all day.

Q. Did he make any explanation of his presence last Sunday? A. I do not remember any.

Q. What business had you with Mr. Richards? A. It is not my office, and I didn't say it was.

Q. Whose office is it? A. It is the office of the Electric Improvement Company. I have stated that I used that office for making out my reports, mostly in the evening.

Q. Did you make out any report last Sunday? A. I came up to get blanks to take them home.

Q. Those were gaugers' reports? A. Yes.

Q. Had you done any gauging that week? A. Yes.

Q. Where? A. San José.

Q. Whose warehouse? A. It wasn't any warehouse at all.

Q. Cellar? A. It was in a distillery; yes.

Q. Give me the dates. A. I cannot remember. I go to a great many places.

Q. You are sure you did some gauging last week? A. Yes.

Q. And sent your reports in Sunday; sent them to the Internal Revenue Collector of San Francisco? A. Yes; made out my payroll; that is what I came in for.

Q. Were you not standing out by the gate when Mr. Conner, Mr. Johnson, and Mr. Slagts called—they called there that evening to see you? A. Yes.

Q. You were out by the gate? A. No, sir; not the gate, but the driveway.

Q. Did those three gentlemen come there together? A. I think Mr. Johnson and Mr. Slagts were a little in advance.

Q. Of whom? A. Of Mr. Conner.

Q. Had you seen Mr. Conner previous to that? A. I had.

Q. Did he tell you to go there? A. He did not tell me to go out there, but he told me Johnson did not want to come through the front way, and I told him to go the rear way, and I went to see him.

Q. Where does the front of Mr. Rea's office front? A. Santa Clara Street.

Q. That is the largest street in the city? A. In the Auzeais building, the old dining-room.

Q. Is there any other office besides Mr. Rea's that has an entrance there? A. Yes.

Q. How many? A. Four or five.

Q. Four or five parties have offices in that building besides Mr. Rea? A. Yes.

Q. Would any one of his constituents suspect that Mr. Johnson was going to see Mr. Rea simply because he was going in the front entrance. A. They might and might not, I could not tell.

Q. That is a large public office? A. Yes; real estate and insurance.

Q. A good many men have offices there besides Mr. Rea? A. Yes.

Q. Did you have any conversation with Mr. Johnson in the presence of Mr. Slagts and Mr. Conner? A. No, sir; nothing except "Good evening;" the darkness of the way in there prevented—no private conversation that I have stated here to the committee.

Q. You were standing out near the gate when they came? A. Yes.

Q. Did you expect them that evening? A. Mr. Conner came in the front way and told me they were there, and Mr. Johnson did not want to come in there that way; well, I said, he could come in the rear way.

Q. Did Mr. Conner tell you that he had made that appointment with Mr. Johnson to see you? A. I do not remember whether he did or not.

Q. Well, if he did not say he made the appointment to see you, why were you there? A. He must have said to meet me; he was to meet me to make the appointment with Mr. Rea.

Q. Is that what Conner told you? A. No, sir.

Q. What did he tell you about it? A. He didn't say anything. I said that Mr. Conner said that Mr. Johnson wanted to meet Rea, and that I was to make an appointment, as near as I can remember; for me to make an appointment between Rea and Johnson, and I supposed that this meeting was to carry out the wishes of Mr. Johnson.

Q. And you were there at the gate, on hand, waiting for them? A. I was in the office at my usual hour; I would have been there whether they came or not.

Q. You went out there to this alley way and went to the gate? A. After Mr. Conner told me Johnson did not want to go in the front way. It was very dark and no light. It is a driveway.

Q. You did not think it strange that he was out for the stuff, as you have stated, when he told you? A. That was his business, sir.

Q. Not yours? A. Not mine.

Q. But your part of it was to meet Mr. Rea and arrange his part, if he was out for the stuff? A. If he did, I thought Mr. Rea could take care of himself.

Q. And if he was successful in making the arrangement, you were willing to be a factor? A. No, sir.

Q. You did not think you would be a *particeps criminis*? A. I did not think Rea would give it to him.

Q. You didn't hesitate to take part? A. I understood he was a member of the Legislature.

Q. Did you want to run Rea against a man that was out for the stuff? A. No, sir; not particularly. I wanted Johnson and Rea to meet.

Q. Did you want Mr. Rea to meet a man that was out for the stuff? A. I wanted him to meet Johnson.

Q. And you knew Mr. Johnson was out for the stuff? A. He said so.

Q. Was it a very proper thing for Mr. Rea to meet a man who was out for the stuff? A. The meeting would not hurt him as long as he didn't give it to him.

MR. BLEDSOE: You remember quite distinctly, do you not, about this meeting with Mr. Johnson in your office? A. Yes.

Q. You remember that distinctly? A. Yes.

Q. And what occurred, and all that you have related, you have carried in your mind all this time, and yet you cannot remember what conversation, if any, took place between Mr. Conner and yourself in your office last Sunday? A. When the question was first asked me I

really did not remember whether Conner was there; but afterwards, when he spoke of Mr. Richards, it came back to my mind. I had no intention of deceiving the committee on any question you might ask me; it merely slipped out of my mind.

MR. BULLA: Were you subpoenaed to come up here? A. Yes.

Q. When were you subpoenaed? A. I was subpoenaed on Friday or Saturday; I am not sure. I was in the house, and the Sergeant-at-Arms came there.

MR. RICHARDS: I think that is our case. We may have some witnesses to recall in rebuttal.

MR. BLEDSOE: I would like to ask Mr. Richards a few questions.

JOHN E. RICHARDS.

Recalled.

MR. BLEDSOE: I want to know whether you were in the Electric Improvement Company's office last Sunday or not? A. I was.

Q. Whom did you see there? A. I saw Mr. Conner.

Q. Any one else? A. Yes, sir; Mr. MacKenzie.

Q. Do you know whether any conversation took place, either between you or either one of those two gentlemen, as to what has been testified to here to-night by Mr. Conner? A. Yes; it was the first time I had met Mr. Conner, and I had been informed by Mr. MacKenzie that Mr. Conner was the man who had arranged the meeting. At the time the Sergeant-at-Arms was down there I had not been able to find Mr. Conner, and he was not subpoenaed regularly, although I think his name was on the regular subpoena, and I had not met him at all until this Sunday, and then got from him—from his lips—

MR. MCPIKE: I object to any conversation of that kind. A. I am not going to state it, except I got from him his statement of the facts.

MR. BLEDSOE: Did you go into the room first last Sunday, or were they there when you went in there? A. That I do not remember.

MR. BULLA: You say you go in there nearly every Sunday? A. Yes.

Q. Did you ever see Mr. Conner in there before? A. I never did. I do not think I ever saw Mr. Conner in my life before. I did not know him.

MR. MCPIKE: Is this your case?

MR. RICHARDS: We have closed our case.

MR. MCPIKE: I do not suppose it is usual for legislative committees to grant nonsuits, and I won't ask it.

The committee here adjourned until Monday evening, February 13, 1893.

JAMES W. REA.

Recalled.

MR. BLEDSOE: You are pretty well acquainted in San José, are you not? A. Yes.

Q. Lived there a good many years? A. Yes.

Q. You know a great many people there? A. Yes.

Q. Do you know a young man named Conner? A. I never did know him until after this case came up when he came to Sacramento.

Q. Did you come to Sacramento together? A. I think when he came to Sacramento was the first time I saw him.

Q. Did you come to Sacramento together? A. I do not think we did. I know we did not. I came on the early train. I remember now we did not.

Q. That is the first time you met him, when you came to Sacramento? A. Yes, it was.

Q. What relation has Mr. MacKenzie borne to you in a business way if any? A. I believe Mr. MacKenzie was in one real estate transaction with me.

Q. Has he ever acted as your secretary in any way? A. My relations with Mr. MacKenzie are social and friendly, and he will, if I ask him to do anything, do it; that is, I might have a letter to answer and I ask him to do it and do some work for me.

Q. Do you look upon him in that light, then, as a kind of a secretary? A. No; we have no relations at all that way.

Q. He has answered letters for you? A. He has—yes. He is very handy. He has his revenue desk, you know—his office in there, and if I ask him to answer a letter that probably concerns him as much as it does me, he will do it.

Q. Do you know what persons are in the habit of dropping into the office of the Electric Improvement Company of San José—can you name any that have a habit of dropping into that place on evenings or Sundays? A. I am not there much on evenings or Sundays, at all. I do not know that anybody. I was there last Sunday, and there was a number there.

Q. What do you mean—yesterday, or a week ago yesterday? A. Yes; yesterday and a week ago yesterday.

Q. What were you doing there a week ago yesterday? A. I do not know whether it was or not. I do not remember. I think I was. I was either there or at Richards' office.

Q. Did you notice Mr. Richards there a week ago Sunday, and Mr. MacKenzie? A. A week ago Sunday?

Q. A week ago yesterday. A. Well, I couldn't tell you whether I was there or not, Mr. Bledsoe. I think I was there if I came into town in the morning, but there was nothing happened there that would call my attention to it.

Q. Did you see Mr. Conner there a week ago yesterday? A. I saw him yesterday.

Q. In your office? A. Yes.

Q. In the Electric Improvement Company's office? A. Yes; I saw him there yesterday.

Q. Was Mr. MacKenzie there yesterday? A. I saw Mr. MacKenzie yesterday.

Q. Your relations with Mr. MacKenzie are friendly, are they? A. Yes.

Q. Did you secure him the position he has now—his Federal position? A. Well, he is my friend, but Mr. Senator Felton did that for him. I did what I could.

Q. You did what you could to get the place? A. Yes. • Senator Felton and he are personally friendly. He was Senator Felton's friend all during this last campaign.

Q. Do you know the men that Conner worked for, in San José, blacksmithing? A. I do not know. I do not know who he works for; no, sir.

Q. You know the blacksmith premises join on to the lumber yard where Mr. Johnson worked, do you not? A. No, sir; I do not. I really don't know the lumber yard that Mr. Johnson worked in, and I knew Mr. Conner after he came up here.

Q. I mean before that time? A. No, sir; if I had ever seen him I had no recollection of it. The first time I ever met Mr. Conner, that I know of, was the day that he came up here.

MR. McPIKE: Do you know Mr. Prindle? A. Yes, I know him well.

Q. Isn't that the blacksmith shop he owns? A. I couldn't tell you that.

Q. Mr. Prindle is a blacksmith? A. I think he is a wagonmaker.

Q. And has a blacksmith shop in connection with it? A. I do not think so; he may have. I never did any business with Mr. Prindle in that line. My impression is he must have a blacksmith shop there.

Q. You and Mr. Prindle are particular friends? A. Not particular friends. We have been quite friendly, but I have never been into his shop since he has moved where he is now.

Q. You and Mr. Prindle are not friendly now? A. Yes. We are not unfriendly.

MR. BLEDSOE: Was Conner in your office yesterday? A. Yes.

Q. At your instigation? A. No, sir; he just was there.

Q. Did he drop in to see you? A. No, sir; I do not think he did.

Q. Who did he go to see? A. Well, I couldn't tell you. I suppose he was interested in this case. I never saw Mr. Conner there until yesterday.

Q. Who else was there yesterday? Was MacKenzie there? A. MacKenzie is most always there. I do not know whether or not yesterday. I saw Mr. MacKenzie yesterday, but whether I saw him in there or not I could not say. I only stayed there a few minutes.

MR. McPIKE: When did you first hear of Mr. Conner? You say you never met him until you came to Sacramento. A. I first heard of him Mr. MacKenzie first spoke to me about Mr. Johnson, but I had forgotten his name. That was the first time I ever remember hearing of him.

Q. How many days after Mr. Barrington met you on the street and told you that Mr. Johnson wanted to see you? Was it before Mr. Johnson came to your office? A. The next day, at eleven o'clock.

Q. Did you tell Mr. Edwards that this conversation was going to take place, and for him to be there? A. No, sir; I do not think I saw Mr. Edwards between that time; I am almost positive I did not between that time.

Q. Between what time? A. And the time I met Mr. Johnson.

Q. Between the time you saw Mr. Barrington and them? A. Yes.

Q. Where did you see Mr. Richards? A. I think I was in my buggy when I saw Mr. Richards.

Q. What time in the day was it you saw Mr. Barrington? A. I cannot tell, but it was in the afternoon, probably between one and two, and may be before or after. It was in the afternoon. I made no date of it. It might be four o'clock, or might be later; I know it was in the day time.

Q. You say that Mr. Edwards then did not get from you anything about this conversation? A. About my appointment? I am quite

positive he did not. But my recollection is now, I did not see Mr. Edwards at all, for I think I got in my buggy and told Mr. Richards, and went away.

Q. When he passed through the room how long did he remain? A. Through the room where Mr. Johnson and I were talking?

Q. Yes. A. He remained until Major Barrington and I went outside—well, until after they went away.

Q. Did he have to unlock the door to get out of the room? A. Just a little catch.

Q. Did he take a key to unlock it? A. No, sir; it is not unlocked with a key.

Q. Then he took no key to unlock it? A. No, sir. He took a key with him, but it was a closet key that he had wrapped in his hand. There is no key to the back door; it has a bolt on it.

Q. It does not lock? A. It locks, but from the inside.

Q. It does not lock with a key? A. I am positive—I know it don't, in fact, because it is locked with a catch.

DEFENSE.

JOHN BROWNLIE.

Called and sworn for the defendant, testified as follows:

MR. McPIKE: What are your initials? A. John.

Q. Where do you reside? A. Nineteenth and Diamond Streets, San Francisco.

Q. You are a member of the Assembly? A. Yes.

Q. And were elected from what district? A. The Thirty-sixth.

Q. Do you know Assemblyman Johnson? A. Yes.

Q. Where did you first meet Mr. Johnson? A. In San José, about between the 5th and 15th of December, somewhere along there.

Q. Had you ever met him before? A. No, sir.

Q. Did you have any business with Mr. Johnson at that time? A. I had a little conversation with him.

Q. Where? A. In his own house.

Q. Did you go to his house to see him? A. Yes.

Q. Will you state what that conversation was? A. It was about United States Senator and about Sergeant-at-Arms.

Q. Did you deliver a card to Mr. Johnson on that occasion? A. I did.

Q. Do you think you would know it if you would see it again? A. I should think so.

Q. Will you look at this card?

MR. BLEDSOE: In what condition was the card when you delivered it to him? A. It was marked; it had a few marks on it.

Q. Who marked it? A. I did.

Q. For what purpose did you mark it? A. I marked it on behalf of Stephen White for United States Senator.

Q. Can you recollect the names that you marked? A. I can recollect some of them.

Q. Who can you recollect? A. Schlesinger, and I marked Johnson's name down in his own house.

Q. Who else? A. Hurley and Sims.

Q. Who else? A. I do not remember, Mr. Bledsoe; there might have been a couple more, or not; I do not remember, I could not tell.

Q. How did you come to mark them? A. I was going to take the card.

Q. How did you come to mark the card? A. Because I wished to see who was for White, and I marked for him and put down the name of Mr. Johnson, and whoever was for White I marked them on the card.

Q. Where did you mark the card? A. In Mr. Johnson's house.

Q. Did you place more than one mark in front of any name? A. I could not remember about that; I couldn't tell about that.

Q. You just remember marking the card? A. Yes, I remember so much. I marked his and a considerable number of names who I thought would vote for White. I do not know whether I marked one or two; I know I put one; I might have put two; I know I put one.

Q. What was your object in putting two? A. I do not remember, I could not exactly explain that, because it was a long while ago.

Q. December? A. Yes; when I marked it. I didn't think anything like this was coming up.

Q. How did you come to mark the card in Mr. Johnson's presence? A. Because I asked him and he said he was for White and I put a mark opposite his name?

Q. Marking him for White? A. Yes.

Q. Were they the only names marked on the card? A. I couldn't tell you whether there were more marks on it. There might have been a half dozen or so, and might have been eight, and might have been only five or six.

Q. Is this a fact that you were electioneering for White, and when you believed a member of the Assembly would vote for White you put a check opposite his name? A. I did; yes.

Q. Did you only succeed in finding five White men? A. I found a good many.

Q. You did not put all the names on one card? A. No, sir.

Q. Then, if you were to refresh your memory as to how many were for Mr. White, you would have to take all these different cards and look them over? A. I suppose I would.

Q. If you did not have it on one card that you could refer to you would have to do that? A. I had only one card with me there. I asked him if he had a list. He said he was making it out on a piece of paper. I said I only had one card, and you can have it and scratch the names off. I can get another card in the city.

Q. Then did it have marks on it when you presented it to him? A. It did have.

Q. Then you put some more on? A. I put a mark opposite his name, and some of those were marked and I gave it to him.

Q. The others were marked when you gave it to him? A. Yes.

Q. How many did you see altogether for White? A. I didn't take much of a tour outside of the city; only as far as San José.

Q. How many did you see in the city on the subject? A. Probably a dozen.

Q. Did you have a card and marked them? A. On some cards I checked.

Q. None except Hurley on the cards you showed Johnson? A. What do you mean?

Q. Did you not say you had Hurley's name as for White? A. Yes; Schlesinger, Sims, and Schroebl.

Q. And you had seen Mr. Hurley? A. I had.

Q. And Mr. Schlesinger. A. Yes.

Q. And Sims? A. I did not see Sims.

Q. Why did you mark his name? A. Because, in talking around California and Kearny Streets, everybody said Sims was out for White.

Q. Did you see Schroebl? A. No, sir.

Q. Why did you mark his name? A. I heard he was for Mr. White, and I put a mark opposite, the same as I did to the others.

Q. You told Mr. Johnson the names were all for White? A. For United States Senator.

Q. Did he ask you to produce the other card that you had marked? A. No, sir; he did not. He did not ask me anything about it.

Q. Did he ask you if those were all you had seen? A. No, sir; he did not ask me that, either, that I remember.

Q. Did he ask you if those were the only men—those four or five? A. No, sir.

Q. That would pledge themselves for White? A. I do not think he did. He might have, I do not remember.

Q. Did you mark Sims' name with two marks or one? A. I could not state that now; I might and I might not. I do not know; I could not tell.

Q. Did you mark Schroebl's name with one or two marks? A. I do not know that, either.

Q. Do you know whether you marked Hurley with two marks? A. I cannot tell; I haven't seen that card for a long time.

Q. What other fight did you mark the name in besides Steve White? A. Sergeant-at-Arms.

Q. Who was he? A. Tom Healy—Mr. Healy, I should say.

Q. Did you or had you been marking the names of members for Mr. Healy? A. Yes, and I had lots of them.

Q. Did you notify Mr. Johnson of that fact or inform him on that subject, too? A. I do not think he asked me anything about it.

Q. Then the marks on the card are not for Healy, but for Mr. White? A. Yes.

Q. Did you notify Mr. Hurley about Mr. Healy? A. Yes.

Q. And you spoke to him about Mr. Stephen M. White? A. Yes, I know I did.

Q. Did you have a card when you went to talk to Mr. Hurley? A. Yes, half a dozen.

Q. Did you mark a card that you took to Hurley? A. I do not remember, I think I did.

Q. You remember marking a card in front of Johnson? A. I remember putting his name down; I forget how many I had on it.

Q. You remember in talking to Mr. Johnson you did mark a card? A. I do, yes.

Q. But you do not remember whether you marked a card when talking to Mr. Hurley or not? A. No, sir.

Q. Do you know whether you had a card with you? A. Yes, I had half a dozen, the biggest part of the time.

Q. How could you tell at any time how many men had signified their intention of voting for Mr. White if you did the marking on different cards? A. I had a particular card—who would vote for him and who would not.

Q. Had you seen Schroebel? A. No, sir.

Q. How did you know he was going to vote for White? A. I heard it talked around that he was a good Democrat and was out for White. Almost all the country members were.

Q. How long before you met Mr. Johnson had you marked Mr. Schroebel's name? A. I couldn't tell; probably three or four days; I could not remember.

Q. How long before you marked Johnson's name had you marked Sims' name? A. I could not tell that, either.

Q. About how many days? A. I couldn't tell, because it is so long ago. That is asking too much.

Q. You can give us an idea? A. Probably a week.

Q. Probably a week before? A. Yes; probably one, two, or three days.

Q. How long before you met Mr. Johnson had you marked Mr. Hurley's name? A. I do not remember that.

Q. Give us an idea. A. Probably a week or two; probably only three or four days.

Q. How long before you met Mr. Johnson did you mark Mr. Schlesinger? A. Probably a week; probably a couple of days, and probably two weeks.

Q. And the only name you marked on the card that day when you met Mr. Johnson was who? A. Was himself.

Q. Did you mark Mr. Schlesinger's name when you were talking to him, and at the time you were talking to him? A. I could not say whether I did or not. I do not remember.

Q. What did you do with the other cards you marked? A. I gave them away to everybody.

Q. Gave them away after marking them? A. Yes.

Q. For what reason did you mark them. Didn't you mark them so you could tell how many were out for Mr. White? A. Yes, and I marked those that would vote for Healy.

Q. Notwithstanding you marked those cards for your own information, so you could tell how many would vote for White and Healy, you gave them away? A. Yes.

Q. After you had marked them? A. Yes.

Q. Did you keep a separate memorandum? A. I kept a copy. One or two I had for myself.

Q. After you had interviewed a number of Assemblymen, and marking their names as being in favor of your man, did you take a memorandum off on a card, that is, off on a separate piece of paper? A. Sometimes I did. I believe I did.

Q. What did you do with those memorandums? A. I do not know where they are now. Probably I lost them, or tore them up.

Q. What business are you in, in the city? A. I am foreman of the Golden Gate Park, and work for the Park Commissioners.

Q. What kind of a pencil did you mark those cards with? A. I do not know, but I might have marked them with two or three different

kinds. I might have marked with an indelible pencil, and I might have marked them with a common pencil. I couldn't tell you the color or anything.

Q. What kind of a pencil did you have when talking with Mr. Johnson at San José? A. I couldn't tell that, either. I had two or three different pencils.

Q. What kind of a pencil did you mark his name with? A. I cannot say.

Q. Cannot you say whether you marked it with an indelible pencil, or with an ordinary pencil? A. No, sir; I couldn't tell you; I do not know.

Q. What kind of a pencil did you mark Hurley's name with? A. I could not tell whether an indelible pencil, or a common one. I couldn't tell that, either.

Q. Was the mark on the card on Hurley's name there before you met Johnson? A. Yes.

Q. Did you explain to Mr. Johnson why it was that the card bore no other marks than the four you have named? A. No; I told him he could scratch them off if he wanted to. I told him I had no clean card, and he could scratch them off so he could have a clean card—a list of the Senators and Assemblymen. I do not know whether he scratched them or not, so he could have a list to know who was Senators and Assemblymen. He had a list of Senators and Assemblymen written on a piece of paper.

Q. If you gave this to Mr. Johnson and advised him to scratch the names off, why did you mark his name? A. I asked him if he had not one of those cards, and he said, "No." I gave it to him and he could scratch his name if he wanted to.

Q. You did mark his name? A. I did in front of him.

Q. What time in December? A. Along between 5th and 15th. I do not know exactly when I was down there, probably between the 5th and 15th.

Q. Did you go expressly to see him? A. I did not; I went there to get away from these fellows chasing me for a job, with a friend of mine.

Q. Cannot you give us an idea of the time? A. I cannot tell, between the 5th and 15th.

Q. What time in the week? I do not know; Tuesday, Wednesday, Thursday, or Friday.

Q. The fact of these men chasing you for a job was impressed very strongly on your memory? A. You would think so, too, if you had about a hundred running after you.

Q. Cannot you recollect some incident of that chase which would bring the time back to your memory when you were in San José? A. No, sir.

Q. How long after election? A. I told you it was between the 5th and 15th of December. Mr. Peckham, the reader of the House, he can tell you. I met him down there at that time.

Q. Do you know how this card got into the possession of Mr. Rea? A. I do not know.

Q. If it ever was in his possession? A. I do not know Rea at all, and I do not know anything about it.

Q. Was Mr. Kennedy's name marked on the card? A. I do not know; I do not think it was; it might have been.

Q. How does it come that you remember so distinctly that Hurley's name and Schlesinger's name and Sims' name and Schroebel's name was marked on that card? A. I remember theirs.

Q. What makes you remember them so distinctly, when you cannot remember that Mr. Kennedy's name was not marked on it. Is there any facts in connection with the card that makes you remember those four names distinctly? A. I remember about those four gentlemen. Mr. Kennedy's might have been put down, too.

Q. Can you remember some of the names you marked on the other card? A. Yes; I can.

Q. Who were they? A. My own, for one.

Q. You marked your own? A. Yes.

Q. So you would not forget you were for White? A. Yes; and Mr. Hendrickson.

Q. Mr. Hendrickson; for what? A. For White.

MR. BLEDSOE: Did you mark Mr. Hendrickson's name at the time you were talking with him about it? A. I do not remember; I do not think I did.

Q. These memorandums of these different names in that Senatorship fight were marked on different cards? A. Yes; there were lots of them.

Q. And you gave those cards away? A. Yes; I kept some.

Q. Have you those cards now, or that card now? A. No, sir; I do not know where it is. I haven't had one for three or four weeks.

Q. Now, you do not know what kind of a pencil you used in making those marks, whether an indelible pencil or an ordinary pencil, like this? A. I could not say, because I had both in my pocket, and have had right along, all the time. I do not remember which one I did mark with.

Q. You do not know whether you made more than one mark opposite each name? A. No, sir; I could not tell you.

Q. If you did put a second mark opposite any names, you cannot tell what you did it for? A. No, I cannot.

MR. MCPIKE: This was the only card you had with you? A. That is all. If I had one that was not marked I would have given him that. That was the only one I had at the time.

Q. Did you look at that card?

MR. RICHARDS: Until I finish the cross-examination of this witness on that card, I think it is but right to keep the card from the witness. [So ordered.]

MR. MCPIKE: Where did you get the card? A. I think I got it from Mr. Healy himself. I got them from different parties.

Q. You had a number of them? A. I had about twenty, altogether.

Q. You saw Mr. Schlesinger and Mr. Hurley both before you went to San José? A. Yes.

Q. You say that you did not know Mr. Sims at that time? A. No, sir.

Q. Or Mr. Schroebel? A. No, sir.

Q. But you have known Mr. Schlesinger and Mr. Hurley? A. Yes.

Q. Can you fix the date when you were in San José—was it along about the first week? A. It was after that, I think.

Q. You say that was the 1st? A. It was between the 5th and 15th.

Q. Between the 5th and 15th? A. I think it was around there some place.

Q. Did you see any one besides Mr. Johnson at San José whom you can recollect now? A. I met Mr. Peckham.

Q. Clerk of the Assembly? A. Yes.

Q. George W. Peckham? A. Yes.

MR. BLEDSOE: You do not swear positively now whether you could identify the card or not? A. No, sir; I think I could.

MR. MCPIKE: I think he should have a right to identify the card.

MR. CHAIRMAN: You simply want him to identify the card?

MR. MCPIKE: Yes.

MR. RICHARDS: We will allow the witness to identify the card.

MR. CHAIRMAN: Now, Mr. Brownlie, I will ask you if that is the card in question—the one that you had in your pocket and gave to this party? I would like you to state positively whether it is or not [handing card to witness]. A. That looks like the same kind of a card; of course they all look alike.

MR. BLEDSOE: Can you say whether that is or is not the card? A. It looks like the one I gave him.

MR. BULLA: Are you able to say, from your examination, whether that is the card you gave him? A. No; I do not know as I could swear to it. It looks exactly like it; the same kind of a card. I do not know what kind of a pencil that I marked it with.

Q. Is there any mark by which you could identify it as against one hundred other cards of the same kind? A. No; I do not know as I could. It looks just exactly like the card; the same kind of a card and looks exactly like it.

MR. BLEDSOE: Will you testify that you made any one of those marks on that card? Will you testify that you made either one of those marks there? A. I do not know. That daub was not there, anyhow.

Q. You say that daub was not on the card that you gave to Mr. Johnson? A. Yes.

Q. That is, that blot of ink? A. This ink mark down here [showing].

Q. You have not answered the question. I asked you will you swear that you made either one of those marks opposite those names? A. I would not swear to that particularly, because there are lots of people make marks in the same way, and it is a good while ago. But that looks just like the card.

Q. It has the general appearance of the card that you gave him? A. Yes.

Q. But you will not swear to any mark on that card when you gave it to him, as having been marked by yourself? A. No, sir; I could not swear to that exactly. But it looks like it, though.

Q. If you cannot swear that any mark on that card was made by yourself, are you prepared to swear that this is the card you gave Johnson? A. It looks just like it.

Q. If you cannot identify any mark on that card as having been made by yourself, are you now prepared to swear that this is the card that you gave Mr. Johnson? A. No, sir; I couldn't swear whether it is or not. But I think that is the card I marked just the same.

MR. BULLA: What is that last remark? A. I think that is the card I marked. I have marked so many—

MR. CHAIRMAN: Could you swear that you marked those names that are marked there on that card? A. I know I marked those names. I could swear to that.

Q. Can you swear that you did mark those names? A. Yes.

Q. But you cannot swear positively that that is the card you marked them on? A. No, sir; I could not because there are so many alike.

MR. BLEDSOE: But you marked the names for the purpose of refreshing your memory as to who would vote for Stephen M. White for United States Senator? A. Yes.

Q. And you marked several and gave them away? A. Yes, and copied them off, showing who would vote for Mr. White. I would take them off and put them on to another card.

MR. McPIKE: You want to be understood, Mr. Brownlie, that when you got through with those cards you would take the names of those parties on to another as being for White? A. I did that generally.

Q. Did you do that in this instance? A. I believe I did next day; I didn't have any more cards with me.

Q. But you had a memorandum book at home, or some piece of paper? A. I had a piece of paper that I kept the Sergeant-at-Arms on, and the United States Senator I kept on another.

Q. All you know about this is that you went to see Mr. Johnson and handed him the last card that you had upon which you had previously marked the names of several members of the Assembly whom you recognize now, and at the time you handed the card to him you also marked his own name? A. I did, yes.

Q. And whether this card has been substituted for the proper one of course you do not know. A. I could not tell you that, no sir. I do not know anything about that.

Cross-Examination.

MR. RICHARDS: I understood you to say, Mr. Brownlie, that there were at least twenty of these cards upon which you marked various names and gave away? A. I did, yes; and tore up some of them and lost some.

Q. You gave them away to chance persons whom you would meet? A. Yes; anybody who would want one of the cards I would give it to them, and wanted to know the names, I would say, "Here is a card, I can get lots of them."

Q. At any rate you gave them to outside parties? A. Any one that wanted a card I gave it to him, and say I could get lots of them.

Q. And you gave them away entirely regardless of whether you had the names marked on them or not? A. Yes, I did.

MR. BLEDSOE: Can you tell us the names of any persons you gave cards to? A. I gave half a dozen persons cards, I said.

Q. Can you remember any names of any person you gave a card to? A. Yes.

Q. Who are they? A. I gave a card to Jack Bragg.

Q. Did you call his attention to the marks? A. I do not know whether I did or not.

Q. Who else did you give one of the marked cards to? A. I do not exactly remember. I know I gave him one.

Q. Cannot you remember any one else? A. I do not know as I can, without lying about it.

Q. Do you know whether you gave to Mr. Bragg the same admonition that you did to Mr. Johnson, that he could erase those marks? A. I

did not, because he did not care anything about whether they were marked.

MR. RICHARDS: Then these marks on the card that you had made were of no particular significance; you gave the cards away to anybody? A. Yes, to anybody that wanted one.

Q. And you think you gave away as many as twenty? A. I do not know as I gave that many away.

Q. Now, will you tell us any person to whom you gave a card that had marked names on it—the names of which were marked that you can recollect and state—mention one person to whom you gave a card on which names were marked; on which three names were marked that you can remember and state? A. I do not know whether I can or not. Of course I had so many cards marked for Sergeant-at-Arms and Speaker of the House, and everything else.

Q. If you cannot remember any other card which you gave away to any person, with names on it, the names of which you remember, how does it come that you can remember that these names were marked on this particular card which you gave to Mr. Johnson? A. I told you there might have been seven or eight. I do not know exactly the number that was marked there.

Q. But you named in your direct examination three of the names? A. Yes.

Q. How comes it that you can remember those three names on this particular card, and yet you cannot remember any single card that you gave to anybody, and cannot remember the names? A. I remember putting Schlesinger and Hurley's name on half a dozen.

Q. Then you can only name one man outside of Mr. Johnson to whom you gave these twenty? A. Yes.

Q. And his name was Jack Bragg? A. Yes?

Q. Cannot you remember any of the other men that you gave one to except Jack Bragg? A. I think there was about a dozen.

Q. Name one that you do recollect. A. I think Hurley, and Schlesinger, and Jim Burke, and Kennedy.

Q. Will you swear the card that you gave Jack Bragg had those names on it? A. Had a dozen.

Q. Had you before the time you marked this card, as you have stated, met Mr. Sims? A. No, sir.

Q. Never had met him? A. No, sir.

Q. How did you come to mark his name on any card? A. They were talking around California and Pine about which one would vote for White, and they said that Sims was a good Democrat, and most of these country members were out for White, and I marked his name off.

Q. Then these names that you marked on the card were simply the men whom rumor declared were for White? A. Yes, two of them I had seen myself.

Q. Without reference to knowing the men, or knowing they were for White, you marked their names down as for White? A. I did do that, yes.

Q. Yet under those circumstances, that you marked each card that rumor gave you, you are willing to come here and swear without seeing this card, that those names were on this card? A. That is what I said.

Q. What did you say you marked Johnson's name for? A. Because he told me at the time he was for White, and I crossed his name.

Q. And immediately gave him the card? A. Probably we talked for half an hour and then I happened to ask had he one of these cards. He said no, he said he had a piece of paper that he had the Assemblymen and Senators on. I said, "Take this, here is a card for you."

Q. Had you ever before that time met Mr. Schroebel? A. No, sir.

Q. How did you know he was for White? A. I heard the same thing.

Q. Just a rumor on the street? A. That is all.

Q. Had you ever met Schroebel? A. No, sir.

Q. Did you talk about Mr. Schroebel that day to Mr. Johnson? A. I do not think I did.

Q. You do not think you mentioned Mr. Schroebel that day? A. I might have.

Q. Did you call Mr. Johnson's attention that day to these identical names on this card? A. I do not remember; I think I said "They are marked, but you can scratch them off."

Q. You had no particular discussion as to these names? A. I had not.

MR. BLEDSOE: Have you that memorandum or paper which you copied the names on? A. No, sir.

Q. What did you do with it? I do not know what I done with it.

Q. Did you keep your memoranda of the names for United States Senator? A. I do not know, I might have it.

Q. How long before the election of the United States Senator did you lose it? A. I didn't mark it down—the date.

Q. You lost it before the session convened? A. I do not know whether I destroyed it, or lost it, or gave it away.

Q. Before this session commenced? A. Before the session commenced.

Q. Then you had lost all the fruits of your investigation on that, if you had given the cards away, and lost your memoranda, you had lost the fruits of your labor? A. I have a pretty good head on my shoulders.

Q. Then you remember the names? A. Yes.

Q. Why cannot you tell us the names on the other cards; why cannot you call the names of the three or four other names, besides this one? A. Didn't I tell you? I told you Mr. Hennessy and Kennedy.

Q. On Bragg's card? A. I don't know whether on that card or not. There might have been twelve or fourteen on Bragg's, I do not know how many.

Q. After you had copied those names from the marked cards on your memorandum paper—and committed those names from the memorandum to memory? A. I had that card up to—I do not know how long—I had it a long time.

Q. But you did not have it when the session commenced? A. I could not say whether I did. I might have had it a week or two afterwards; I couldn't say that for sure.

MR. RICHARDS: Did I understand you to say you gave a card to Mr. Hendrickson? A. No, sir; I did not.

Q. What did you say with reference to Mr. Hendrickson? A. I say I had his name marked on the same card.

Q. You say you talked to Hendrickson about that question? A. I spoke to him about Mr. White.

Q. Did you mark his name on a card at the time you spoke to him? A. I do not know as I did.

Q. Did you show him any card? A. I do not think so. I might have, but I do not think I did.

Q. Had you ever met Mr. Johnson before that day? A. No, sir.

Q. How did you come to go and see Mr. Johnson that day? A. I was taking a bum to San José, and I said I guess I will go and see Mr. Johnson, and see how he stands on the Senatorial fight. I had nothing else to do.

Q. Just accidental, so as to speak? A. Nothing accidental about it.

Q. You did not go to San José to see him? A. No, sir.

Q. Who did you go to see? A. Nobody at all. Just wanted to take a bum around in the country. I went to Gilroy and Tres Pinos.

Q. Do you know S. N. Rucker? A. No, sir; I do not think I do.

Q. He used to be an Assemblyman here? A. No, sir; I do not.

Q. Do you not remember meeting Mr. S. N. Rucker about two weeks ago in San Francisco? A. No, sir; I do not.

Q. Or San José? A. No, sir.

Q. You swear you never met Mr. S. N. Rucker? A. I do not know. I do not know who he is. I am introduced to so many people, I forget him if I did.

Q. Will you swear that about two weeks ago—how recently had you been to San José before you went to see Mr. Johnson? A. About a year or two.

Q. And though you had not been there for over a year you do not remember saying you went to see Mr. Moody? A. I do not remember whether I did or not.

Q. Did you go to see him last December? A. I did not go to see him personally. Of course I went to San José to see everybody.

Q. Do you swear that you did not say to Mr. S. N. Rucker about two weeks ago that you went to see Mr. Charles Moody? A. No, sir. I might have told him so.

Q. You do not swear on that subject one way or the other? A. No, sir; I would not.

Q. You say you are foreman of the Golden Gate Park? A. Yes.

Q. How long have you been foreman of Golden Gate Park? A. About five years.

Q. What was your occupation prior to that time? A. I had charge of the paint department of Finks & Company, in the Occidental Hotel, for six years.

Q. You are Assemblyman from what district? A. The Thirty-sixth.

Q. I understand you to state to Mr. Bledsoe that you will not swear that this is the identical card that you gave to Mr. Johnson? A. No, sir; it looks exactly like it.

Q. But you would not swear that the card you gave to Mr. Johnson did not have as many as eight or nine marks on it? A. There might have been seven or eight.

Q. Do you know whether it had or not? A. I do not know anything about it.

Q. You do not know whether the card you gave to Mr. Johnson had four or five, or eight or nine names on it? A. I know it had five, and it might have had seven or eight on it.

Q. Didn't it have as many as a dozen? A. No, sir. I said to Mr. Johnson that there are names on it, and you can scratch them off.

Q. Why did you tell him to scratch the names off? A. I told him "The card is not very clean, and you can scratch them off."

Q. You had marked his name on the card as one vote for United States Senator? A. I did.

Q. And all the other men, you say, voting for White? A. For United States Senator, yes.

Q. And you knew he would vote for White for United States Senator? A. He said he would.

Q. And yet you said he could rub those marks out? A. I asked him, after we had talked for half an hour, if he had one and he said no. I said, "You can scratch these names off and you may have that card." I said, "I can get plenty more when I go to the city."

Q. If you marked the name of M. J. Hurley with two marks, you have no recollection of it? A. No, sir.

Q. And if you marked the two marks, you have no idea why you did so? A. No, sir.

Q. And when you gave him the card you did not notice the fact that it was marked with two marks? A. It was too long ago; I didn't think anything like this was coming up.

MR. BLEDSOE: Why is it you remember the names marked with one mark? A. Don't I remember the names marked with two as well as one?

Q. Why is it, it has been just as long ago? A. It is just the same.

MR. RICHARDS: Did you have any card, or any number of cards, in your possession upon which all the men who would vote for White were marked? A. I think I did have one.

Q. What did you do with that card? A. I do not know where it has gone.

Q. You do not remember to whom you gave the card? A. I do not remember whether I lost it, or tore it up, or gave it away.

Q. The fact is, these cards were matters of no care on your part? A. No.

Q. Just a little memoranda that you gave away, or tore up and threw aside? A. I didn't have any use for them after the Senator was elected, or after Healy was elected, or anybody else.

Q. Even before they were elected you gave them away promiscuously? A. I gave away one or two to each person asking, and always one.

Q. Why didn't you keep one with these names on? A. I told you I had one. I took a marked one with me, and I had only one when I went to San José.

Q. And you had made out only one? A. Three or four.

Q. And possibly five or six? A. Possibly five or six.

Q. And may be a dozen? A. I do not remember whether a dozen, I might have.

Q. That had names marked on like this? A. Some did; I do not know whether they all did or not.

Q. And those cards you gave away to people you do not remember the names of at all? A. No.

Q. How long did you have this card in your hand when you were talking with Mr. Johnson? A. I could not tell you that.

Q. How did you do; just take it out of your pocket and mark his name on it, and then offer it to him? A. No, sir; I did not.

Q. What did you do with it? A. I think I stuck it back in my pocket.

Q. And then when you wanted a list— A. I asked him about a half an hour afterwards "Have you a list of Senators and Assemblymen?" He said "I have written out on a piece of paper some of them." I said, "I will give you this one, and you can scratch the names off; I can get one when I go back to the city."

Q. Then all the time that you had this card in your hand, were you talking with Mr. Johnson? Did you mark one or two? A. I do not know whether I had marked on it two or three names before.

Q. There was no special going over this card between yourself and Mr. Johnson, was there? A. No, sir.

Q. Was there any discussion between Mr. Johnson and yourself, with reference to these names? A. No, sir.

Q. Did you discuss the name of Mr. Sims at all? A. No, sir.

Q. Did you mention the name of Schroebel? A. No, sir.

Q. Didn't you call the name of Hurley at all? A. No, sir; not that I remember.

Q. Did you mention the name of Mr. Schlesinger? A. I do not think I did.

Q. These names were not mentioned by you at all, in that conversation with Mr. Johnson? A. I do not think so. They might have been. I do not remember if it was.

Q. But if they were, probably a large number of other names were mentioned as voting for Mr. White? A. I do not remember.

Q. Do you not remember as to any other names being mentioned? A. I do not remember whether they were or not.

MR. BULLA: Where did you get these cards? A. I got them from Mr. Healy, some eight or ten; and I got some from Sidney Hall.

Q. Then you got cards from others besides Mr. Healy? A. I did; I got some from Mr. Sidney Hall. Most everybody had those cards—three or four or a half a dozen.

MR. RICHARDS: After this interview with Mr. Johnson, when did you see him again? A. Met him in Sacramento.

Q. When you came up to the Legislature? A. Yes.

Q. Did you have any discussion then with reference to this card? A. Not until a short time ago—a week or so ago.

Q. A week or so ago was the first time you had any discussion with him with reference to this? A. A week or two. He asked me if I remembered giving him a card down there, and I told him yes.

Q. Did you then discuss the matter of this card with him? A. He asked me if I remembered the names I put on there. I said I thought I remembered them, although I did not know how many.

Q. Did you then tell him the names of those you had marked on the card? A. I did.

Q. You remembered at that time these special names on this card, and told them to Mr. Johnson? A. I did. I told him I might have made three or four more. I told him I was not so sure but I remembered Sims and Hurley, but Schroebel I was not sure about.

Q. Do you remember whether you had Mr. Sims' name marked on any of the other twenty? A. Yes, I did.

Q. To whom did you give the card that you had Mr. Sims' name marked on? A. That is the card; I kept the one I had.

Q. Did you have any card besides the one you kept that you had the name of Mr. Sims on, or do you know whether you gave it away? A. If I did, I do not know the name.

Q. Will you swear that the name of Mr. Sims was marked on other cards except this? A. Yes, on two or three.

Q. Was there any of those cards upon which the name was not marked? A. Yes, a great many of them.

Q. Now, if the name of Mr. Sims was marked upon some of these cards and not upon the others, how came you to remember that the name of Mr. Sims was specially marked on the card that you gave Mr. Johnson that day? A. I will tell you. Because this card was for United States Senator, and Mr. Healy was running for Sergeant-at-Arms, and I had his card, and for Speaker I had cards marked for Mr. Gould and Matthews.

MR. BLEDSOE: You say a card like this was marked for United States Senator? A. Yes.

Q. What kind of card was marked for Mr. Healy? A. One of his own.

Q. Different from this? A. Just about the same.

Q. Identically the same? A. It had different colors, that is all.

MR. RICHARDS: Was the name of Mr. Sims marked upon the twenty you had, or such number as you could tell, that had the names of Assemblymen on it that would vote for Mr. White? Was the name of Mr. Sims upon every card of these twenty or less which you had marked for United States Senator? A. No, I do not think it was on twenty. It might have been on two or three.

Q. There were some, then, it was not on? A. Lots of them.

Q. How is it, that having this number of cards which you speak of, some of which had the name of Mr. Sims on and some of which did not, that you are able to swear that you now remember that the card you gave to Mr. Johnson had on the name of Mr. Sims? A. I can swear to four names on that card, but Schroebel I am not sure about; but I know of four.

Q. And notwithstanding you had a lot of these cards, some of which had these names and some did not, you are prepared to come here and swear that this card you gave to Mr. Johnson had these identical four names on it? A. Yes.

Q. And that although you took no special notice of those names and entered into no discussion with Mr. Johnson or entered into any conversation with him about them? A. I do not know, I might have referred to them.

MR. BLEDSOE: You do not remember all the conversation with Mr. Johnson? A. I do not remember; I might have spoke about it, though.

Q. You do not remember any conversation that you ever had with Mr. Johnson that would enable you to testify to it? A. No, sir; not about that.

Q. What has there been in your mind to keep these particular names in your mind all the time, when you cannot remember whether you had any conversation? A. He asked me if I remembered it and I told him I did. That I just started off the day before and went down town and struck two or three men. And then I marked his name on it when I got out there, and he said he was out for White for United States Senator.

MR. CHAIRMAN: Do you remember whether these cards, as you have stated, that were marked for different candidates—do you remember whether all of those cards were the same character as this of Thomas E. Healy? A. All about the same. I think they were all about the same that I had.

Q. Did you make any other marks on any other cards similar to this in regard to any other candidate for any other office except United States Senator? A. Yes, I marked the Speaker of the House and Sergeant-at-Arms; that is about all.

Q. Why didn't you ask Mr. Johnson who he would vote for for Sergeant-at-Arms? A. I might have, I think I did. I do not remember testifying as marking his name for Sergeant-at-Arms. I do not remember. I think I did speak to him. I might have, and might not.

MR. BULLA: I think you stated some of these cards Mr. Healy sent out were different colors? A. They were mostly of one color that I had. He can tell you more about it himself.

Q. Do you not remember the color of the card you gave to Mr. Johnson? A. It was of the same color as that. I have seen some pink ones, but did not have any of those.

MR. RICHARDS: If the names which you marked on these cards were supporters of Mr. White, and Mr. Sims was a supporter of Mr. White, how does it come his name was on some cards, and not upon others? A. Well, when I was putting the names down for Sergeant-at-Arms it was different. I was putting him down for United States Senator.

Q. I am not talking about Sergeant-at-Arms, I am talking about the United States Senator? A. Didn't I tell you it was for Senator?

Q. You have already stated that Mr. Sims was not on all of them; why was he not on all of them? A. I do not know. I copied it and put it down on the one I kept.

MR. BLEDSOE: Were you acquainted with Mr. White at that time? A. Yes.

Q. Were you particularly interested in making his fight, or were you particularly interested in Mr. Healy's fight—to which fight did you devote the most attention? A. I do not know. I only went as a kind of a pleasure trip to San José. I wanted to see how Johnson stood.

Q. But which fight did you pay particular attention to—to Healy's or White's? A. To Mr. White's the most.

MR. RICHARDS: At the time you gave your card to Mr. Johnson, was there any connection between the cards and the United States Senator—if it had been Mr. Healy's card, would you have given it to him as readily as this? A. I do not know as I would, because I asked him how he stood, and I marked his name for United States Senator. I did not intend giving it to him at the time I marked it. He had a piece of paper lying on a desk. I said, "Have you got a list?" He said, "No." I said to him, "You can scratch them off; it don't make any difference, and take this."

Q. As you state this was the only card you had, and if this card had been marked for Healy, you would have given it to him as readily as that card from Mr. White? A. Yes.

Q. There was no particular significance that this card was marked for White? A. At the time I was talking for White, that is the reason I have marked it.

Q. How comes it that you remember so distinctly that you gave him a card marked for White instead of a card marked for Healy? A. Because I was working more for White than Healy.

Q. In this conversation of half an hour, you say you did not mention Mr. Healy's vote at all? A. I do not know whether I did. I couldn't tell you that. I think that I did though, if I am not mistaken.

Q. What did you mean when you told him he could scratch those names off—that he could rub them off? A. To scratch them off.

Q. He could scratch them off—how could he scratch them off without rubbing them off? A. He could take a knife and scratch them.

Q. That is your accustomed way of taking them off? A. If you take an indelible pencil mark you could not get it off without taking a knife. I do not know whether I told him to scratch it off or not.

Q. Then the kind of ink with which you made the mark did not come to your mind that day? A. I could not tell you. I do not know whether I told him to scratch them off or rub them off.

Q. In your direct examination you stated that you marked a few names on the card? A. I told you I marked five or six, or six or seven.

Q. Did you not mark those five or six on the card at the time you gave it to Mr. Johnson? A. Marked them before I gave it to him.

Q. At the time you gave the card to Mr. Johnson, you are very positive you did not mark any but one? A. Not at that time. I marked his name in his own house. The others were marked before that.

Q. And you did not mark any other names at the time, except the name of Mr. Johnson? A. That is all.

Q. Why did you not mark a lot of these other names on the card for United States Senator? A. What for?

Q. Whenever rumor brought to your ear the name of a man, you marked it on a card? A. Yes, and I marked it on the one I kept. I think I could remember the name of one man until I got back to the city.

Q. Mr. Johnson and you discussed the men who would vote for Mr. White? A. Yes, I asked him how he stood on it, he said he was out for Mr. White. I took the card out in a moment or two afterwards and put a mark opposite his name, and it was all right.

Q. Did you discuss any other names at that time who would vote for Mr. White? A. I do not remember that I did.

Q. Did Mr. Johnson suggest anybody that would vote for White? A. I do not think he did.

Q. Did you ask him if Mr. Thomas, of Santa Clara, would vote for Mr. White? A. I do not remember.

Q. Did you ask him whether Mr. Whitehurst would? A. No, sir.

Q. Did he volunteer whether any man would vote for Mr. White? A. No, sir.

Q. He did not mention a single man who would vote for Mr. White? A. I do not think he said anybody at all. I did not ask him.

Q. You went over to see him as to how he stood in reference to White? A. Yes, I was taking a bum and went to see him.

Q. Had you seen Mr. Whitehurst to see how he stood? A. No, sir.

Q. Had you seen Mr. Thomas? A. No, sir.

Q. Did you know how they stood on that day, when you went to see Johnson? A. No, sir.

Q. How does it come that you were out in Mr. White's fight particu-

larly at that time, and only asked Mr. Johnson? A. I was not in Mr. White's fight particularly at that time.

Q. Then, you did not ask Mr. Johnson how the other Democratic members of the Legislature would vote? A. No; I was not out for White particularly at that time. I just went to San José. I told you I wanted to get away from the crowd chasing me around, and I went down there, and I thought I would go and see Mr. Johnson.

Q. Tell us what you went to see Mr. Johnson for? A. I went to see how he stood on the fight for United States Senator.

Q. Then, your special mission in going to see Mr. Johnson was to see how he stood in reference to White? A. Yes.

Q. How long did you talk in reference to Mr. White? A. I couldn't tell; probably five minutes.

Q. And you did not ask him in that time anything about how the other members of the Legislature stood on the subject? A. No, sir; I did not.

ANTONE FRIANT.

Called and sworn, testified as follows:

MR. MCPHKE: You live in San José? A. Yes.

Q. And for how long? A. For about thirty years.

Q. You are cashier and Secretary of the Union Savings Bank? A. Yes.

Q. The latter part of November, or the early part of December, did you know Assemblyman Johnson? A. Yes.

Q. Of Santa Clara County? A. I did.

Q. In the latter part of November, or the early part of December, 1892, did Mr. Johnson come to you and want to know if the bank would let him have one hundred dollars? A. Yes.

Q. What did he state at the time? A. He stated to me that he wanted to borrow one hundred dollars, and also stated that for the purpose of paying some bills—advertising bills, and I suggested to him that the rule of the bank was to have an indorser, and he suggested the name of Mr. Meserve, Charles E. Meserve, and I told him that would be satisfactory.

Q. Did he go away then? A. Yes.

Q. And afterwards returned? A. And afterwards returned, and there was another name instead of Meserve.

Q. Do you recollect the name—was it Slagts? A. I think that was the name—yes, that is the name.

Q. Did you refuse him? A. Yes.

Q. You did not know Mr. Slagts? A. I did not know Mr. Slagts.

Q. Do you know a man by the name of Barrington? A. Yes.

Q. A newspaper editor down in your town? A. Yes.

Q. Did Mr. Barrington come to you to see you about the loaning of any money to Mr. Johnson? A. Yes, he came to the bank.

Q. What did you tell him, if anything? A. Well, I refused again the proposition.

Q. Did Mr. Barrington offer himself as an additional security? A. Yes.

Q. Did you refuse to loan the money on the security of Mr. Slagts and Mr. Barrington together? A. Yes.

Q. What position does Mr. Geoghegan hold, if any, in your bank? A. He is not in our bank; he is in the Commercial Bank. Our bank is the Union Savings Bank of San José.

Q. Yours is the Union Savings Bank of San José? A. Yes; and the other is the Commercial Savings Bank of San José.

[No cross-examination.]

JOHN W. RYLAND.

Called and sworn, testified as follows:

MR. McPIKE: You reside in San José? A. Yes.

Q. And resided there all your life? A. Yes.

Q. You were the late candidate for Congress down there in that district? A. I believe so.

Q. Do you know Assemblyman Johnson? A. Yes.

Q. Of Santa Clara? A. Yes.

Q. About the 10th or 15th of December, did Mr. Johnson, or between the 10th and 15th, did Mr. Johnson apply to you for the loan of a hundred dollars? A. I imagine about the 15th he applied for the loan of one hundred dollars.

Q. Did you take him to any bank in San José and introduce him? A. I told him, in effect, that I didn't have any money to loan, or didn't want to loan it, and took him around and introduced him to Mr. Finley, who is Vice-President of the Commercial and Savings Bank of San José.

Q. Your father is one of the stockholders? A. He is a small stockholder.

MR. RICHARDS: Mr. Rea is one of the Directors of that bank? A. Yes.

MR. BLEDSOE: Commercial and Savings Bank of San José? A. Yes.

Q. Is Mr. Finley Vice-President? A. Mr. Finley is Vice-President of that bank.

Cross-Examination.

MR. RICHARDS: Did you ask Mr. Johnson what security he offered? A. Mr. Johnson remarked that he had very good security.

Q. Did he say who it was? A. No, sir.

Q. Say how long he wanted the money? A. No, sir; I didn't go that far; I didn't care to know; that settled it with me.

Q. How long had you known Mr. Johnson. A. I had known him I think about six months at that time.

Q. You say you were a candidate for Congress? A. Yes.

Q. You were upon the same ticket as Mr. Johnson, who was a candidate for Assembly? A. Yes.

Q. Did you stump the county together? A. No; I was in different parts of my district. It comprises a greater portion of San Francisco, Santa Clara, San Mateo, and occasionally I would be in some meeting with Mr. Johnson in Santa Clara.

Q. And when you were at the same meeting you both spoke, did you? A. Yes.

Q. Do you remember whether Major Barrington spoke at any of those

meetings with Mr. Johnson? A. I know on two occasions he did; maybe more than that.

Q. At least two? A. Yes.

Q. He was quite active in his efforts and oratory in favor of Mr. Johnson, was he not? A. Yes.

Q. And all this? A. Yes, and myself.

Q. He supported the Democratic ticket, so far as you know, ardently? A. That is the impression he gave me.

MR. McPIKE: Was Mr. Geoghegan Cashier of the same bank? A. The same bank.

MR. McPIKE: I wish to introduce the following stipulation in connection with the testimony of Mr. Ryland [Reads]: "It is stipulated that Mr. J. T. Geoghegan would, if present, testify that Mr. Johnson borrowed from the Commercial and Savings Bank of San José, on the joint promissory note of said Johnson and Edward Slagts, the sum of one hundred dollars, on the 14th day of December, 1892. Dated February 7, 1893, and signed Henry C. McPike and A. J. Clunie, attorneys for defense. S. M. Shortridge and J. E. Richards, attorneys for Mr. Rea."

[No objection.]

S. W. BORING.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside? A. San José.

Q. How long have you resided there? A. About twenty-seven years.

Q. Do you hold any office in Santa Clara at present? A. I am present County Clerk.

Q. Have you ever held any other office in the county? A. Yes.

Q. What office did you hold in 1870? A. Under Sheriff.

Q. In 1878? A. I was sent to the Senate.

Q. State Senator? A. Yes.

Q. In 1888? A. Mayor of the city of San José.

Q. In 1892 you were Clerk? A. Just elected Clerk.

Q. Do you know a young man by the name of Johnny MacKenzie, who was a witness here?

MR. BLEDSOE: On what ticket were you elected to all these offices? A. Democratic ticket.

MR. McPIKE: Do you know John MacKenzie? A. I do, sir.

Q. How long have you known him? A. Say about twenty-five years; from twenty to twenty-five years.

Q. You know a great many people in the community in which he resides who know him? A. Yes.

Q. Do you know his general reputation in that community for truth? A. I know what his general reputation is.

Q. What is it, good or bad? A. For truth?

Q. Do you know what his general reputation is for truth, honesty, and integrity in that community? A. Well, I think it is bad, as far as I know.

MR. BLEDSOE: Do you know what it is? A. I do.

Q. What is it, good or bad? A. Bad.

Cross-Examination.

MR. RICHARDS: How long had you known Mr. MacKenzie? A. From twenty to twenty-five years.

MR. BULLA: Does his present reputation extend during the whole time of your acquaintance? A. A part of this time, sir.

MR. RICHARDS: Being what part do you refer as that part in which his reputation has been bad? A. Well, sir, from the marriage of his wife up to the present time.

Q. What has the marriage of a wife to do with the reputation for truth?

MR. CHAIRMAN: How long has that been? A. I think about fifteen years—fifteen or sixteen years, perhaps. Well, is it necessary for me to go into private affairs? I only mentioned the fact that from the date of his marriage, and during those years.

Q. I want to know why you stated, and why you fix his reputation as bad from the date of his marriage? A. For the reason I was asked how long I knew it to be so.

Q. Have you been on friendly terms with Mr. MacKenzie during that time? A. I have been on terms with him as most of the citizens, passing and repassing each other, paying compliments, and all that sort of thing. He and I, personally, have had no difficulty whatever.

Q. Have had no difficulty? A. None whatever.

MR. BLEDSOE: Was he a supporter of yours when you ran for office? A. I really cannot tell you. I think not, though.

MR. RICHARDS: He has generally been your political opponent? A. I think so; that is my opinion.

CHARLES W. FAY.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside? A. I reside at San José.

Q. How long have you lived there? A. About three years.

Q. What is your business? A. Real estate and street contract business.

Q. Do you know Mr. P. L. Barrington? A. I do.

Q. Editor of the "Democrat"? A. Yes.

Q. How long have you known him? A. About a year and a half, probably two years.

Q. Do you know a great many people in San José, in the community in which he lives, who know him? A. Yes.

Q. Have you often heard people speak of him? A. I met him quite frequently where other people were.

Q. From the speech of people, can you say you know his reputation for truth, honesty, and integrity in that community? A. Yes, I might say that.

Q. Was it good or bad? A. I would say it was bad, generally considered.

Cross-Examination.

MR. RICHARDS: What are your politics? A. Democrat.

Q. Mr. Barrington is also a Democrat? A. I believe so.

Q. You have lived in San José about three years? A. Yes.

Q. Do you know how long Mr. Barrington has lived there? A. To my recollection it is probably two years, a year and a half or two years.

Q. You came to San José an entire stranger? A. No, sir; not an entire one. I did not know very many people there.

Q. Practically you were a stranger to our city before you came and lived there? A. Yes.

Q. You have met Mr. Barrington frequently? A. Well, I met him probably every day; it is a small place, you know, and we generally meet.

Q. You are associating with Mr. Barrington's friends, are you? A. Well, they may not want to be called his friends—what might be considered his friends.

Q. Who associated with Mr. Barrington? A. That's the idea.

Q. Have you discussed the Major's reputation? A. No, I never discussed his reputation; I never considered there was much about it to discuss.

Q. Then, what there is of it you never talked about? A. No, sir.

Q. Did you ever hear anybody else talk about it? A. Yes.

Q. As to his reputation as to truth? A. Well, I heard him spoken of in terms, you understand, that would give the impression that they thought very slightly of the Major.

Q. Have you ever heard the Major's reputation for truth discussed? A. Well, that they would not trust him.

Q. That is not the question I asked you, but whether his reputation for truth has ever been discussed? A. Well, I could construe it probably that way, but at the same time there never was a discussion as to the Major's truth, as I know of.

Q. Never have heard the matter of the Major's truth discussed? A. No, sir.

Q. Never heard any people discuss the question or give an opinion upon it, as to whether they would believe the Major if he went upon the stand and took a solemn oath? A. Well, I would express it in that way probably—exactly that way.

Q. What were the expressions? A. That they would not believe the Major under any circumstances; that the Major was a man of that character that they would give no credence to him.

Q. Did you ever hear the matter of his swearing as a witness in any case, or under any circumstances discussed? A. No, sir.

Q. Can you name anybody that you have heard say that they would not give the Major's statement credence? A. Well, probably not exactly I couldn't say that, but they were suspicious of the Major and consider him of a character that they would not trust. I might name two or three gentlemen that have made expressions of that sort.

Q. Were those gentlemen associates of Mr. Barrington? A. No, sir.

Q. They were not? A. No, sir; that is, they were not to be considered as associates. They did not wish to be considered as associates. The Major has spoken to them and addressed them on different occasions when he approached them.

Q. The Major is one of the journalists of that city? A. I believe so; as a fact, he is the editor of the "Democrat."

Q. You knew the Major more intimately during the last campaign than previously? A. No.

Q. Is it not a fact that Mr. Robin, who is your associate in business, was running for the Assembly? A. Yes.

Q. And that the Major and you and Mr. Robin and others came in contact somewhat under those circumstances? A. No, sir; Mr. Robin was making his own fight.

Q. You met Mr. Barrington during the campaign? A. Yes, and never gave the man much importance, because I did not think the man much of a help.

Q. Did he endeavor to be a help to his Democratic friends? A. Well, he considered himself so; at least he spoke that way.

Q. You have studied the Major's character somewhat closely, have you not? A. Well, not exactly closely, but I have kind of got my own impression as to the character of the Major.

Q. The Major, in fact, is a sort of a unique character? A. Yes, I do consider him so.

Q. A sort of Bohemian in his ways? A. Yes; he likes to hear himself talk a good deal.

MR. BLEDSOE: What is your cause of dislike? A. I have no dislike.

Q. Is it because of your personal feeling against the Major? A. I do not know as I have given expression to any personal feeling; I did not intend to if I did.

Q. Have you had any trouble with the Major about the newspaper? A. No, sir.

Q. Did he ever attack you in that way? A. Never; I do not think he ever mentioned me.

Q. What is your politics; are you a Democrat? A. Yes.

Q. Was you a supporter of Mr. Johnson's, or did you live in his district? A. I am not in his district.

Q. Then you have no personal feeling in that respect? A. Not the slightest; no, sir.

MR. BULLA: Do you know Mr. Johnson? A. I do; yes.

Q. Friendly with him? A. Friendly; yes. I have no other reason than to be friends.

Q. Socially? A. I met him during the campaign probably a dozen times, and talked with him in a general sort of way. Never went into a deep discussion or anything of that sort.

Q. Interested in his fight in any way? A. Not the slightest. I hadn't any interest further than being a Democrat. Our politics being the same, we could talk on that subject in that respect harmoniously, that is all.

MR. RICHARDS: Isn't it a fact, Mr. Fay, that about the worst you can say of Major Barrington is, he is a Bohemian? A. It would depend a good deal—well, it would depend a good deal whether the Major would be interested, or whether the matter would be construed to what we would say Bohemian. If we would say a person was going to talk without any intention, then I might say the Major was a Bohemian; but if anything more, where his testimony would affect anything, I would not put any weight upon it, that is all.

Q. That is your judgment of the Major now? A. Yes.

Q. You say you met the Major during the campaign—did you meet him occasionally in Johnson's fight? A. No, sir; I never discussed Mr. Johnson's fight with the Major at all.

Q. Do you know whether the Major discussed it? A. No, sir.

Q. On the stump and so forth? A. Not to my knowledge.

Q. The Major, you say, was a Democrat? A. Yes; he professes that way, I believe.

Q. His paper is called the "Democrat"? A. Yes.

Q. As a matter of fact, during the campaign it was a straight Democratic paper, was it not? A. Well, I only occasionally glanced at it. I did not probably read one issue of it in a month.

Q. The fact is, Mr. Fay, that it was a Democratic paper? A. Yes.

MR. BLEDSOE: Did you subscribe for it? A. I never subscribed for it, but it comes to the office.

Q. Did you advertise in it? A. I never advertised in it.

MR. RICHARDS: Is it or not a fact, Mr. Fay, that Mr. Barrington in his paper has cast some strictures upon the company to which you belong, in the matter of obtaining contracts from the city? A. Well, I never seen it, but I heard about it this evening. I heard there was an expression to that effect—that is about all—that the Major had said something about it. I do not know and I did not even pick up the article to see, because I gave it so little importance.

Q. Before you came on the stand you knew that the Major had said something derogatory to your obtaining a contract in the city of San José? A. Well, no. It was a sort of an innuendo, that is about all.

Q. An innuendo? A. Yes.

Q. It was against yourself or the company? A. Against the company.

Q. How long before you came on the stand was it you read that insult, or heard of it? A. About all the discussion of the matter this evening was when you and I were talking to Mr. Robin in respect to it.

Q. Mr. Robin is your associate in business, and Mr. Robin called your attention to the fact that the Major had assaulted you in his paper? A. No, sir; he didn't call my attention, but some way or other the conversation came up about getting prominence through newspaper notices, or something of that kind, and this remark was passed; that is all.

Q. That you people had gained prominence through the Major? A. It was more spoken of in a light manner than anything else. It was stated where the Major had mentioned us the other day. There was nothing intended for anything more.

Q. Nothing more than a slight mention? A. It might be considered so by some, but I did not.

Q. Isn't it a fact that the Major in his paper, and you know it, attacked you and your company in San José? A. This is the first time I have heard of it.

MR. BULLA: You were subpoenaed to come here as a witness? A. Yes.

Q. When? A. Saturday.

Q. Did you know what you were expected to testify to? A. Well, the proposition was, I believe, to testify on his supposed character.

Q. Any person in particular? A. Well, Mr. Barrington; it was mentioned in regard to his character.

Q. You say up to date you do not know that the Major had ever said anything derogatory about your company in his paper? A. No, I do not know anything about it at all. As I express it, my feelings toward

the Major are friendly. I converse with the Major, and meet him occasionally. I hold no hard feelings against him.

Q. Do you know that the Major is aware of your opinion of him? A. My opinion of him? I think the Major thinks I feel kindly towards him; I do not think he thinks that I have any hard feelings against him at all.

Q. But your opinion as to his reputation? A. I do not know whether he does or not—whether he knows what opinion I have toward him.

Q. You never said anything to him or about him, you say, so as to give him any idea that you had that kind of an opinion? A. No, sir.

MR. BLEDSOE: Have you ever sought to avoid his company on account of your adverse opinion? A. No, sir; I never sought it.

Q. Have you ever sought to avoid it? A. No, sir.

Q. Have you ever tried to avoid his company or association on account of your adverse opinion of his character? A. No. I do not ever recollect of stopping and talking to the Major about any matter, unless the Major stopped me. I probably met him on the car, or something of that kind, when he was coming up; but so far as meeting him, and as far as going to see him and stopping him on the street to talk of matters, I never have done so to my knowledge.

MR. MCPIKE: What is the size of his paper down there, four by six? A. It is a little better than that—you might say eight by twelve.

Q. How many pages? A. I think it has four pages—that is, four sheets.

Q. How often does it come out? A. Once a week, I guess—Thursdays.

Q. It does not cut a very large swath in the journalistic field down there? A. I do not think so. In fact I have heard it expressed that the Major delivered the paper to many places that were not ordered.

MR. RICHARDSON: The fact is that the Major has no financial backing in the publishing of his paper? A. That has been my understanding.

Q. Never has had any since coming to San José? A. No.

Q. He has to go along as cheaply as he can? A. Yes.

Q. And therefore has to deliver the paper himself—you know that—frequently? A. I do not know how it is delivered, or how it gets to its destination.

MR. BULLA: Do you know anything about the circulation of the paper? A. Well, I seem to find it in a good many places.

Q. Do you know anything about the circulation of the paper? A. That is all, I saw it in a good many places; as to the circulation, I cannot say.

Q. Was it recognized as a Democratic paper during the last campaign, A. Of course the politics were Democratic, as far as being a Democratic organ—

Q. Was it recognized as a Democratic paper? A. I think it was, yes.

MR. RICHARDS: Now, isn't it a fact, that this whole reputation, which you say, has risen out of the fact that he has tried to conduct a weekly paper without any money, and that he is a good fellow about town, with a joke for everybody, and a sort of Bohemian in his way; isn't that the source and the foundation of the whole reputation which you say he has? A. I think he has expressed that himself.

Q. Isn't the source and foundation of the whole reputation of the Major as to its being bad for truth, being his conducting of a paper without any means, and as a joking, hail-fellow well met with every-

body, and a sort of a Bohemian on the edge of society, as it were—is that, or is it not, the whole foundation of the reputation that you say he has? A. Well, no; that is a sort of reason for the reputation of the man, and that probably would be given to him, but at the same time the character of the man, I think, is also expressed in little ways to such an extent that you might say it was bad.

Q. Did you ever hear of his swearing to a lie?

[Objected to.]

Q. Did you ever hear anybody say that they ever knew him to swear to a lie?

[Objected to, and objection sustained.]

H. K. ROBIN.

Called and sworn, testified as follows:

MR. MCPIKE: Where do you reside? A. Santa Clara County.

Q. How long have you lived there? A. A little over two and a half years—outside of San José itself.

Q. Do you know Major P. L. Barrington, so called? A. I do.

Q. Did you meet him on the street between First and El Dorado Streets about the 28th or 29th of December, 1892? A. I met him there somewhere, either the day this Rea letter came out in the "Chronicle," or the day after.

Q. And by the Rea letter you mean the letter to the Legislature? A. Yes, to the Speaker.

MR. RICHARDS (to Mr. McPike): Did you ask Major Barrington the same questions you are now putting to this witness?

MR. MCPIKE: I did not.

Q. Mr. Robin, how long have you known Mr. Barrington in that community? A. A year and a half in that neighborhood.

Q. Have you heard a good many people speak about him down there? A. Yes.

Q. Do you think you know his general reputation for truth, honesty, and integrity in that community? A. I think I do.

Q. Is it good or bad? A. Very bad.

Cross-Examination.

MR. RICHARDS: You are the Mr. Robin who just a little while ago told Mr. Fay that Mr. Barrington had assaulted you in his paper? A. I believe he did have something in his paper. I believe the Council passed an ordinance there prohibiting the Street Commissioners from employing more than one or two or three men on the streets, and Barrington came out afterwards and said they wanted to save the money so the pet company of the town could get the money for paving San José, or something to that effect.

Q. The pet company you think referred to your company? A. We thought it brought it very closely there, yes.

Q. And you did not like this imputation upon the pet company? A. I did not notice it at all. Why, his sheet is so insignificant I didn't notice it at all.

Q. You did not notice it enough to remember what it was when you came here? A. No, sir; it is too insignificant—the most insignificant I ever saw.

MR. McPIKE: Do you know whether or not Mr. Barrington's paper was a Rea paper during the last campaign? A. I could not tell.

MR. BLEDSOE: Is your testimony as to Mr. Barrington's reputation based upon what people generally say about it? A. Yes.

MR. BULLA: Do you know Mr. Johnson? A. I do.

Q. How long? A. Since the campaign.

Q. Friendly with him? A. Friendly as two candidates could be. I was a candidate, too.

Q. Are you a Democrat? A. Yes.

Q. Are you especially interested in Mr. Johnson in any way? A. No, sir; why should I be?

MR. RICHARDS: Do you know whether Major Barrington supported Mr. Johnson during the campaign? A. I think he did by some of the notices in his paper.

Q. He supported him in his paper to the best of your knowledge? A. I get the paper, but I look at it so little I couldn't really tell you whether he did or not.

MR. McPIKE: I am willing to admit that he did.

MR. BULLA: What are your relations with Mr. Rea? A. None at all.

Q. What is your business? A. I am Superintendent of the Southern California Bituminous Company, San José.

H. H. MAIN.

Called and sworn, testified as follows:

MR. McPIKE: You reside in San José? A. Yes.

Q. What is your business? A. Business Manager of the San José "Herald."

Q. How long have you been such? A. About eight years.

Q. Do you know Major P. L. Barrington? A. I do.

Q. Do you know his reputation in that community for truth, honesty, and integrity? A. Yes.

Q. What is it; good or bad? A. It is not good.

MR. BLEDSOE: If it is not good, is it bad? A. Well, between good and bad; I would say it was bad.

MR. RICHARDS: Mr. Barrington is a fellow journalist of yours? A. I believe so.

Q. Don't you know so? A. He is a newspaper man.

Q. And you are a newspaper man? A. Yes.

Q. And, therefore, you are both newspaper men? A. Yes.

Q. And you are both Democrats, also? A. I am a Democrat. I do not know about Mr. Barrington; he claims to be.

Q. Mr. Barrington claims to be a Democrat? A. Yes.

Q. He publishes a paper, which is called the "Democrat?" A. Yes.

Q. And published that paper during the last campaign? A. Yes.

Q. It was a Democratic paper, was it not? A. That is what he called it.

Q. Do you know whether it was or not? A. Well, it contained the whole Democratic ticket, and supported part of them.

Q. Don't you know as a fact it supported the whole Democratic ticket? A. No, I do not.

Q. Do you know anything to the contrary? A. Well, it was not regarded as supporting the whole Democratic ticket.

Q. I will ask you if you know anything to the contrary? A. I do not, because I did not pay much attention to it. It only comes out once a week.

Q. So far as you know, then, it supported the whole Democratic ticket? A. I have heard parties say that it did not.

MR. CHAIRMAN: Don't state anything you heard.

Q. So far as you know? A. I do not know, but I understood that it did not.

Q. Generally, at least, it did? A. It did.

Q. It supported Mr. Johnson among other Democrats? A. I think so.

Q. You took an active interest in Democratic politics there during last campaign? A. Yes.

Q. Did you make any speeches on the stump? A. No, sir.

Q. Do you know whether Major Barrington did? A. I do not know whether he did of my own knowledge; I heard he did.

Q. Don't you know, as a matter of fact, on the stump as well as in his paper, he supported Mr. Johnson? A. I do not know that of my own knowledge; I heard that he did.

MR. BLEDSOE: The papers in San José sometimes attack each other very sharply, do they not? A. Yes.

Q. I suppose your paper and the "Democrat" had some little spats during the campaign? A. No, sir.

Q. Never? A. No, sir; not that I recollect of.

Q. Then your testimony that Major Barrington's reputation for truth, honesty, and integrity is bad is based on what? A. It is not based on any business rivalry. It is based on my knowledge of his general reputation.

Q. How is your knowledge of his general reputation obtained? A. Well, I have been running a newspaper there, and I have heard people speak of him, and speak very disparagingly, too. That is the only way I have arrived at his reputation. I never heard any one speak well of him. I have heard everybody speak ill of him.

Q. As to his truth? A. I have heard them say he would not tell the truth. I could not recollect the names.

MR. RICHARDS: Since election has Mr. Barrington and yourself got along amicably in the newspaper field? A. Yes; never had any trouble.

Q. Is he now attacking your paper in his? A. I think he is; I never paid any attention to it.

Q. Has he attacked you personally? A. I do not think so. If he had I would not care anything about those things, because I am used to it.

MR. RICHARDS: You remember distinctly, do you not, that he has assaulted the "Herald" in his paper? A. I cannot recollect an incident, but I think he has.

Q. As a fact, isn't there quite a bitter fight down there between the newspapers and among people there, and matters which you and the Major disagree upon, some matters about the issuance of license and so forth? A. There has never been any particular feeling between the Major and myself or any one connected with the "Herald." We never

thought enough of the criticisms in the "Democrat" to speak of them, because we did not think they had enough weight.

Q. In local politics, and on matters generally, the "Herald" and the "Democrat" take different sides? A. I believe it is generally conceded that he represents the whisky policy.

Q. And you do not? A. No, sir.

Q. And a great many bitter things, from a journalistic standpoint, have been said in the course of the contest? A. I don't hardly think it can be said it is bitter.

Q. The Major has been upon one side, and you and your paper upon the other? A. Has not been considered much of a factor in it. I hardly ever read his paper.

Q. You read it when it attacked the "Herald"? A. I cannot recollect an instance where he spoke of the "Herald." I think he has, though.

MR. BULLA: Do you know Mr. Johnson? A. Yes.

Q. Friendly with him? A. Yes.

Q. How long have you known him? A. I have only known him since he became a candidate for the Assembly. I have no extensive acquaintance with him.

Q. Especially interested in his fight during the campaign? A. I was for the Democratic ticket, and took the same interest in his success as any other.

Q. No special personal interest? A. No, sir; none whatever.

MR. CHAIRMAN: Was Mr. Johnson in your district? A. No, sir.

MR. BLEDSOE: Your paper is a paper that circulated throughout the country? A. Yes.

W. J. WHITE.

Called and sworn, testified as follows:

MR. McPIKE: You live in San José? A. Yes.

Q. How long have you lived there? A. About two years.

Q. What is your business? A. Newspaper business.

Q. What newspaper are you connected with? A. The "Daily Record."

Q. Do you know Major Barrington? A. Yes.

Q. How long have you known him? A. About two years.

Q. Do you know his general reputation for truth, honesty, and integrity in that community? A. Yes, I think I do.

Q. Is it good or bad? A. Bad.

MR. RICHARDS: How long have you been connected with the "Record"? A. I think since the first of last May.

Q. You were in San José and conducting a newspaper during last campaign, were you? A. Yes.

Q. Your paper supported Mr. Johnson for the Assembly? A. Yes.

Q. So did Major Barrington's paper, did it not? A. Yes.

Q. The Major also supported Mr. Johnson upon the stump, did he not? A. I do not know, I am sure; not to my knowledge.

Q. Between the "Democrat," Major Barrington's paper, and the "Record," your paper, there has been quite a newspaper controversy, and division over various things? A. I do not call to mind any particular thing just now.

Q. The Major has attacked your paper, and you have said some

things about the Major, from time to time, or about his paper; I do not ask you to recollect particular instances, but generally you have been at variance? A. I do not remember.

Q. You do not remember that you have; is that your answer? A. Yes.

MR. BLEDSOE: How has your paper stood towards Mr. Rea, the complaining witness in this investigation? A. Been opposed to Mr. Rea.

Q. Is it not a fact that you mailed copies of your paper yesterday to members of this Assembly, in which you made a very violent attack upon Mr. Rea in this investigation? A. I am not publishing the paper now.

Q. Are you connected with it? A. I am simply an employé at present.

Q. Do you know whether or not, the question I have asked you—whether that was done? A. Whether the papers were mailed?

Q. Whether marked copies of the "Record" were mailed to the Assembly yesterday, containing a very violent attack upon Mr. Rea in this investigation? A. No, sir; I do not know what the paper published.

Q. Was it mailed on Saturday here? A. I believe some were mailed Saturday.

Q. And did it not contain an attack upon Mr. Rea, the complaining witness in this action? A. Yes.

Q. And marked? A. I do not know.

Q. Was the article marked? A. I do not know, sir.

Q. But you do know that a copy of the "Record" was mailed on Saturday to the members of the Assembly, containing an attack upon the complaining witness in this case—that is what you testified to? A. Well, I have seen them here since I have been here.

Q. Have you ever had any trouble with Major Barrington? A. Yes.

Q. Personally? A. No, sir.

Q. Have you ever been employed by him in any capacity? A. No, sir.

Q. What is your business on the "Record," reporter? A. No, sir; principally solicitor and collector.

Q. Who is conducting that paper? A. Mr. Salmon.

MR. McPIKE: The "Daily Record" that you speak of is known as an independent Republican paper? A. Yes.

Q. Has the "Record" been making this attack on Mr. Rea for a good many months? A. Yes.

Q. It did not begin two or three days ago or two or three weeks? A. No, sir.

Q. But long before the investigation came up? A. Yes.

Q. And months before the Democratic Convention met at Fresno? A. Yes.

MR. RICHARDS: Isn't it a fact, Mr. White, that the "Record" is a paper supported by the personal and business enemies of Mr. Rea in that community—you know that to be a fact, do you not? A. Well, in his way —

Q. Answer my question first—is that or is that not a fact? A. It might be this way, in a business way. I wouldn't know a party bringing in an advertisement—I wouldn't know whether he was or not.

Q. I am not asking about parties putting in advertisements. I am asking you as to the supporters and backers of this paper; if you do not know as a fact that they are the personal and business enemies of Mr. Rea? A. Some of them would be and some of them would not.

Q. Don't you know as a fact that the policy of the paper in its assaults upon Mr. Rea has been dictated by those who were his personal and business enemies? A. Dictating the policy of it?

MR. CHAIRMAN: Do you know or do you not know that to be a fact? A. Well, I cannot say. The advertising patronage that is received, and I know that some of it was received by the business enemies of Mr. Rea.

MR. BLEDSOE: You say that Mr. Rea's general reputation is bad? A. No, sir.

Q. Mr. Barrington's? A. Yes.

Q. Upon what do you base that statement? A. I was connected with him when he first came to the city.

Q. You were connected with him? A. Yes; I worked on the same paper.

Q. You worked with him? A. Yes, the "Better Times." Afterwards I worked with him on the "Phoenix."

Q. Is that what you base your testimony on about his reputation being bad? A. No, sir. The general opinion—the general opinion throughout the State with those people I come in contact with.

Q. You mean, then, what people generally say about him; is that what you mean? A. Yes.

MR. RICHARDS: You say Mr. Barrington and yourself worked upon the same paper when he first came there? A. Yes.

Q. And after awhile he was discharged or left that paper? A. It was from the "Phoenix" that I believe he was discharged.

Q. And you remained? A. Yes.

Q. Upon the paper after he was discharged? A. Yes.

Q. And after he was discharged, a very bitter personal contest arose between Major Barrington and the proprietor of that paper, did it not, in which they assaulted each other in their respective columns; that is a fact, is it not? A. Yes.

Q. Now, is it not a fact that this is the time when you acquired this opinion of Major Barrington? A. No, sir.

Q. You had a good opinion of him then, did you not? A. No, sir.

Q. When did you acquire it? A. As I said, during my association on the "Better Times."

Q. And you base your present testimony upon that association, do you? A. No, sir; not entirely.

Q. Your relations with the Major have been friendly since that time? A. I never did associate with him.

Q. Your relations with him have not been friendly? A. I have never been unfriendly that I know of. No more after he left or at the time than before.

Q. You mean to say they were unfriendly before? A. No, sir.

Q. Then they have never been unfriendly? A. I do not mean by that that I class the man as a friend of mine.

Q. Never have been his friend, have you? A. No, sir.

Q. Since shortly after you went to work together? A. No, sir.

MR. BULLA: How did you happen to be subpoenaed as a witness in this case? A. It is more than I know.

Q. Did you have any talk with anybody about this case in any way? A. Yes.

Q. With whom did you talk? A. Well, I have talked with a great many people since the case came up.

Q. Name any one connected with the case? A. Well, I talked with quite a number of gentlemen outside.

Q. You mean with the witnesses? A. Yes.

Q. Did you relate to anybody that you knew anything about the case? A. No.

Q. You do not know how you came to be subpoenaed as a witness to testify? Do you think it was because your enmity or unfriendly feeling to the Major was so well known that they would come to you? A. No, sir; I never expressed any enmity to the Major that I know of.

Q. You do not know how you were selected as a witness to testify as to his character, do you? A. No, sir.

Q. The attack on Mr. Rea, you say that you know it was mailed here, and you saw it here to-day? Didn't you mail it, or know it was mailed here, last Saturday? A. Yes, I heard a young man say so this morning.

Q. Did you know that it contained an attack upon Mr. Rea when it was mailed here? A. Of course I read the paper. I knew the attack was in it, the article referring to Rea, and I know it was sent here; I must have known that was in it.

MR. RICHARDS: Ever since this investigation has begun, your paper has contained attacks upon Mr. Rea similar to that one. Isn't that a fact? A. I think it has. I could not say every day.

Q. You supported Mr. Thomas, also a member from that county? A. Yes.

Q. And L. A. Whitehurst? A. Yes.

G. W. LOWERY.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside? A. I live in San José, Santa Clara County.

Q. How long have you lived there? A. Thirty years.

Q. Have you ever held any office in that county and city? A. Well, I have held the office of Councilman.

Q. A member of the Board of Education also? A. Yes; I was the Chairman of the Board for a number of years.

Q. Do you know Johnnie MacKenzie? A. Yes.

Q. How long have you known him? A. Well, I suppose it must be in the neighborhood of twenty-five years.

Q. Do you know his general reputation in that community for truth, honesty, and integrity—do you know it? A. Yes.

Q. Is it good or bad? A. It is bad.

Cross-Examination.

MR. RICHARDS: Do you know Mr. MacKenzie intimately? A. Well, yes; you might say it was intimately. I have been acquainted with him, but I have not had any business with him for a number of years. I know him from boyhood. I think he was a boy when I first knew him.

Q. Do you know Mr. MacKenzie's associates and friends? A. Well, I know some of them.

Q. You have heard his reputation for personal truth discussed among them, have you? A. I have, among the people of the town.

Q. Is it not a fact, Mr. Lowery, that the people who have discussed Mr. MacKenzie's reputation for truth, have as a rule been either the personal or political enemies of Mr. MacKenzie? A. Well, no, not altogether, because it has been common talk among a great many people there.

Q. Mr. MacKenzie has been quite active in local politics, has he not? A. Yes.

Q. Been a very active Republican? A. Yes.

Q. Has been a member of County Committees? A. I think he has.

Q. And is a very active man in many ways? A. Well, he may be as far as that is concerned. I know he is in politics. I do not know as he is in anything else.

Q. You know as a fact he has made a great many personal or political enemies down there? A. I presume he has.

Q. And among others he has made one of yourself; is not that a fact? A. No, sir.

Q. Are you not his political enemy? A. I am not his enemy at all.

Q. Is it not a fact that you yourself have very frequently talked down Mr. MacKenzie in town? A. I might have in conversation in business.

Q. You have talked against him very bitterly? A. No, I think not.

Q. Is it not a fact that you have done a great deal yourself to spread this reputation that you are now testifying about? A. No, sir.

Q. During the last two or three years is it not a fact that you have discussed with a great many people the personal character of Mr. MacKenzie? A. I might have discussed that in connection with others.

Q. And in those conversations you yourself have expressed the opinion that you now express here? A. Well, I have joined in with others that have expressed the same thing.

Q. Is it not a fact that you have been very bitter towards Mr. MacKenzie because you thought he was instrumental in defeating you for a position in San José? A. No, sir.

Q. As overseer of the new Hall of Records? A. No, sir; he had nothing to do with it as far as I know.

Q. That was not the cause of your animosity to him? A. No, sir; I do not think he had anything to do with it. As far as I know of it, he did not.

Q. In politics for the last several years you have felt a hatred and have been hostile to Mr. MacKenzie? A. His methods.

Q. You frequently so state that hostility? A. Well, I do not think I have stated it very often. I might have stated it once or twice, but I do not think any more. My animosity was not directed against Mr. MacKenzie in that matter that you refer to.

MR. BLEDSOE: Who was it directed against? A. Mr. Rea.

Q. You say that you discussed Mr. MacKenzie with others quite frequently; who were those others; was Mr. Rea one of the others? A. No; I suppose by taxing my memory I could tell if you wish to hear the name; no, sir; it is not Mr. Rea.

MR. BULLA: You say whatever animosity you had in that particular transaction was directed towards Mr. Rea? A. Yes.

Q. Does that feeling of animosity still exist? A. Well, in a measure

it does, but not very much so, because I have succeeded in getting the place that he prevented me from getting when I wanted it.

Q. So your relations with Mr. Rea, I suppose, from what you say, are not very friendly? A. They are not bitter, and I must say that they are not unfriendly nor friendly; I do not take much stock in him.

Q. Do you know how you came to be subpoenaed in this case? A. I do not.

Q. Do you ever recollect of saying anything to anybody that will enable them to know how you felt? A. I do not know, and I was surprised when I was subpoenaed.

Q. You do not know how it happens to be known that you entertain this opinion? A. I do not know, sir.

Q. Are you particularly friendly towards Mr. Johnson? A. I do not know Mr. Johnson, and never met him to my knowledge.

MR. BLEDSOE: What are your politics? A. Republican.

Q. There are factions in the Republican party in San José—one faction arrayed against Mr. Rea and his friends, and another for him? A. Yes.

Q. And you belong to the faction that is arrayed against him? A. Yes.

Q. That faction to which you belong is composed of merchants, bankers, and a great many prominent persons? A. Yes.

MR. BULLA: Are there no bankers and merchants in that other faction? A. I think there are; I do not know whether they are bankers; I know that there is a bank.

MR. CHAIRMAN: What is your business? A. I am a builder and contractor, and have been.

HENRY PHELPS.

Called and sworn, testified as follows:

MR. MCPHIE: Where do you reside? A. San José.

Q. How long? A. I have resided in the city of San José since 1869, in the county since 1852, with the exception of one or two years.

Q. Forty-one years in the county? A. Yes.

Q. You were four years Deputy Assessor there? A. Yes.

Q. Eight years County Assessor? A. Yes.

Q. Been Chairman of the Free Library Trustees? A. Yes.

Q. And you are in politics a Democrat? A. Yes.

Q. Do you know Mr. John MacKenzie? A. I do; yes.

Q. How long have you known him? A. For a great many years; I cannot say for just how long.

Q. Do you know his reputation for truth, honesty, or integrity? A. For truth and veracity I know his reputation; yes.

Q. Is it good or bad? A. Bad.

Q. Do you know Major P. L. Barrington, so called? A. I do.

Q. How long have you known him? A. Well, a year or two; I cannot fix the time exactly.

Q. That is, while he has resided in San José? A. Yes.

Q. Do you know his general reputation for truth, honesty, or integrity? A. I do.

Q. Is it good or bad? A. Very bad I should call it; that is, his reputation.

Q. Do you know Mr. H. J. Edwards? A. I do.

Q. How long have you known him? A. I should think ten years; perhaps longer; I have known him since 1880.

Q. Do you know his general reputation for truth, honesty, and integrity? A. Well, I have never heard his reputation for things; so far as paying debts are concerned I do not think I ever heard that called in question, but his reputation for politics—

[Objected to.]

Q. Do you know his general reputation for truth in reference to matters in which Mr. Rea is interested? A. I think I do.

Q. Do you know Mr. Edwards' reputation in the community for truth, as a general reputation? A. Well, if you will let me qualify it—

MR. CHAIRMAN: Cannot you state what his general reputation for truth and veracity is in the community in which he lives? A. Yes, I can that. His reputation so far as the attorney has asked me about is not good.

[Ordered stricken out.]

A. I would not want to swear that Mr. Edwards would naturally, on any subject or any question—could not be believed at all.

MR. BLEDSOE: Do you hear what people say about him? A. Yes; I do hear what his neighbors say about him.

MR. CHAIRMAN: Do you know what this man's reputation for truth and veracity is in the community in which he lives? A. Yes, I have heard it discussed very frequently.

Q. Well, what is it; good or bad? A. It is not good, but relates to—

MR. RICHARDS: Go ahead and state what it relates to. Do I understand, Mr. Phelps, that you swear here that the general reputation of H. J. Edwards for truth is bad in that community? A. Yes.

Q. Is that your testimony? A. Yes, that is my testimony, if I can get it in such a shape.

Q. Is that your absolute testimony here—do you so swear? A. Yes, I do still; I would like to qualify it if I can.

Q. Do you swear to that without qualification? A. Yes, I will swear to that without qualification.

Q. So, now, after being examined upon this point and wanting to qualify it a good deal, you are now up to the point that you will swear that Mr. Edwards' reputation for truth in the community is bad? A. In that particular relation.

Q. No, in all relations? A. No, I won't swear to that.

Q. You won't swear to that? A. No, I never heard his reputation discussed in any other than one. I never heard it discussed except in one direction, and in that it is bad.

MR. CHAIRMAN: That would not be his general reputation.

MR. RICHARDS: You say, Mr. Phelps, that you know the general reputation of Mr. H. J. Edwards for truth—his general reputation? A. I have stated, and I state again that I have not heard his reputation discussed except in one direction, and in that it is bad.

Q. His general reputation, then, you have not heard discussed? A. No, if you put it in the broad sense—the broader sense you can get it, I have not.

Q. And you do not swear that his general reputation for truth is bad? A. I swear that his reputation in one direction is bad for truth; but if Mr. Edwards should make some statement in relation to a thing that

he had no interest in, I do not know but what he would be believed in that community, but in one direction he would not be believed.

MR. BULLA: I think it would be well to hear the qualifications that this witness wishes to make. I make that as a suggestion.

A. I would briefly say the qualification is that wherever Jim Rea is concerned that his reputation is not good. He would be expected to say anything that would benefit Mr. Rea.

MR. BLEDSOE: Would he be expected to perjure himself to benefit Mr. Rea—would he be expected in San José to perjure himself where Mr. Rea was interested? A. I think he would.

Q. Then your testimony is, in San José, in the community where Mr. Edwards lives, if he were testifying in the matter where Mr. Rea was interested, or his interests were at stake or supposed to be at stake, he would not be believed under oath? A. I think so, and so state.

Q. What are your politics? A. In politics I am a Democrat.

Q. You are very bitterly opposed, I presume, to Mr. Rea's political methods? A. I am opposed to his political methods.

Q. Very bitterly opposed to them? A. Yes; I have been fighting him as hard as I could.

Q. For many years? A. Ever since he became our political boss.

Q. Are you only politically opposed to him, or are you personally opposed to him also? A. No, sir; I have no personal feelings against Mr. Rea at all.

Q. You are personally acquainted with Mr. Edwards? A. Yes.

Q. And I suppose you are opposed to him politically for the same reason that you are to Mr. Rea? A. Yes; he is regarded there as Mr. Rea's first lieutenant in all his political maneuvers.

Q. How do you base your testimony as to Mr. Barrington being bad—upon what do you base that? A. On the fact that I never have heard any man in the community speak favorably of Mr. Barrington as a man of truth and veracity.

Q. Then your testimony as to Mr. Barrington is based upon his general reputation—what people generally say about him? A. Yes.

Q. And your reputation of Mr. Edwards is based upon that? A. Only in that direction.

Q. Only in that direction? A. It is in that direction.

Q. Do they consider that he would tell the truth in other directions? A. As to other directions, well, I never heard his reputation discussed in anything else than in connection with Mr. Rea's political maneuvers.

Q. Then do you think if he was testifying in a case where Mr. Rea's interests were not at stake, that he would be believed by a jury of San José? A. Well, it would if his testimony was corroborated.

Q. It would have to be corroborated? A. Yes.

MR. RICHARDS: Had you in mind any instance when you took the stand to swear against Mr. Edwards, and where the jury did not believe you and did bring in a verdict in his favor? A. No, sir.

Q. Were you in town in the trial of the case of Edwards versus the Times Publishing Company? A. Yes.

Q. You swore in that case against the reputation of Mr. Edwards, did you not? A. I do not know that I did.

Q. Do you not remember that you were called for that purpose? A. I remember that I was called there as a witness.

Q. And that was upon the question of reputation? A. Now, I am

not sure that the question of reputation entered into it. I know you asked me the question as to whether I was opposed to Mr. Edwards.

Q. Now, was not reputation the whole question that you were called for? A. I remember answering your question.

Q. Do you not remember that the very object for which you were called in that case was to testify to the reputation of Mr. Edwards? A. I do not.

Q. Do you not remember that you were called there to testify, and nevertheless Mr. Edwards got a verdict? A. He got a verdict.

Q. Do you not remember, also, in that case twelve of the respectable citizens of San José, bankers and merchants, took the stand and testified in favor of Mr. Edwards? [Objected to as not the best evidence.] A. I do not.

Q. You have sworn away the reputation of three men in this case, have you? A. Yes.

Q. You are a Democrat? A. I am a Democrat.

Q. Always have been opposed to John MacKenzie? A. In politics, yes.

Q. And are now? A. Am now.

Q. He is a Republican? A. He is a Republican.

Q. And whenever you have met politically you have been opposed to each other? A. Yes, I think so.

Q. Now, with reference to Major Barrington; he is a Democrat, is he not? A. I do not know what he is.

Q. He publishes a Democratic paper? A. He publishes a paper he calls a Democratic paper.

Q. Do you not know it is a Democratic paper? A. No, sir; I do not.

Q. Don't you know during the last campaign it was a straight Democratic paper? A. No, sir; I do not think it was a straight Democratic paper. I never read it during the campaign, I think but one single copy, and then it was fighting quite a good many. That copy was fighting quite a good many Democrats, and I thought it was nearer advocating the Republican than the Democratic side.

Q. You are quite sure that it was during the campaign? A. I think it was.

Q. Do you remember, in that paper, whether it opposed or favored Mr. Johnson? A. I do not know whether it did or not.

Q. You do not know that? A. No.

Q. Do you know whether in fact it supported Johnson? A. It purported to support Johnson, I think. I do not know whether it did or not.

Q. What do you mean by saying it purported to be? A. He gave out to the world that he was supporting Mr. Johnson.

Q. Don't you know he took the stump in favor of Mr. Johnson? A. I know he made some speeches, from hearsay; I never heard him.

Q. They were in favor of Johnson? A. I think so.

Q. That is what you meant by purporting to support him? A. Yes; I never heard him make a speech.

Q. What is your present occupation? A. Real estate agent.

MR. BULLA: Your opposition to Mr. MacKenzie and the other gentlemen is well known there, is it? A. Yes.

Q. That is the way you happened to be subpoenaed as a witness? A. I do not know how I was subpoenaed. I never saw Johnson in my life

that I know of. No man asked me what I would testify to. I do not know how or why I was subpoenaed.

MR. BLEDSOE: But you have been open in your opposition to MacKenzie, Edwards, and Rea? A. Yes, I have.

MR. BULLA: Have you ever stated to others heretofore that you would not believe them under oath, or that their reputation was bad for truth? A. I do not think I have so far as Mr. Edwards or Mr. MacKenzie is concerned; I probably have as far as Barrington was concerned. A newspaper man, Mr. Alvin Davis, told me he was the biggest liar in Santa Clara County. He was then occupying a room in my office, and he says if you have got anything that you do not want him to get hold of, you had better put it so he cannot get at it. I have heard it discussed a great many times since.

Q. Did you start to put away all your valuables? A. I certainly acted on Mr. Alvin Davis' suggestion, and concealed what I did not want him to get at.

MR. RICHARDS: You said you were a candidate for Assessor? A. No, sir; I did not. I said I was eight years Assessor and four years Deputy Assessor.

Q. Did you at the time have any other office? A. Yes.

Q. What? A. Two years ago I was a Library Trustee. The Democrats and the Republicans formed a coalition with Rea; both sides separated, and I run on the People's ticket and received over a thousand votes.

Q. Your own party rather left you at that time? A. Yes.

MR. BLEDSOE: Was Mr. Edwards one of those manipulators? A. Yes.

MR. RICHARDS: You blamed Mr. Rea for your defeat? A. No, sir; I blamed him with others.

Q. You didn't get the whole Democratic support? A. I got Democrats and Republicans both.

Q. You were not a Republican? A. No, sir.

MR. MCPIKE: You got lots of Republican votes when you run. A. Yes.

WILLIAM VINTER.

Called and sworn, testified as follows:

MR. MCPIKE: Where do you reside? A. In San José.

Q. For about how long? A. About twenty years.

Q. What is your business? A. Tinning, plumbing, and hardware.

Q. Do you know Johnnie MacKenzie? A. Yes.

Q. How long have you known him? A. I should judge all of twenty years.

Q. Do you know his general reputation in the community in which he resides for truth, honesty, and integrity? A. Well, that perhaps I would qualify. I suppose on ordinary business matters, fair.

Q. The question is do you know his general reputation for truth in the community? A. On commercial matters, fair.

Q. Do you know his general reputation, what his neighbors say about him—you have heard him talked of? A. As unreliable.

MR. CHAIRMAN: He wants to know what his general reputation for truth and veracity is in the community in which he lives? A. I know what it is.

MR. MCPIKE: Is it good or bad? A. In some ways bad.

[The answer was ordered stricken out.]

MR. MCPIKE: Do you know Major P. L. Barrington? A. Yes.

Q. How long have you known him? A. I think may be two years—a year and a half or two years.

Q. Do you know his general reputation for truth, honesty, and integrity? A. I haven't heard it scarcely.

Q. Whether you know it or not? A. Well, of my own personal knowledge it would be bad.

Q. Do you know what his general reputation is there? A. Yes.

Q. Was it good or bad? A. Bad.

MR. RICHARDS: Bad of your own personal knowledge? A. Yes.

Q. You and he had a difficulty not very long ago? A. A difficulty?

Q. Yes? A. I do not know as I would call it a difficulty. He came down to the shop—

Q. He came down to the shop and wanted to make friends with you after the election was over, and you spoke harshly about it, and would not make friends? A. Yes.

MR. MCPIKE: You would not let him mollify you? A. I simply did not want his acquaintance, and declined it.

The committee here adjourned until Tuesday evening, February 14, 1893, at seven o'clock p. m.

TUESDAY EVENING, February 14, 1893.

JAMES W. REA.

Recalled.

MR. BULLA: Mr. Rea, have you seen the printed copy of the testimony that was given before the committee? A. Yes.

Q. Have you read it over? A. Yes. I do not know whether I read it all over. I read what Mr. Richards had.

Q. On page 38 of the printed copy, eight or ten lines from the top of the page, you are recorded as using these words: "Hurley was a Democrat. I think you will find all Democrats." And he mentioned the name of "Bulla," also? A. No, sir.

Q. Did you ever give any such testimony, also? A. I did not.

Q. There was no such testimony given by you at that or any other time? A. No, sir.

M. C. HARRIS.

Called and sworn, testified as follows:

MR. MCPIKE: Your name is M. C. Harris? A. Yes.

Q. You reside in San José? A. Yes.

Q. How long have you resided there? A. Well, I was born and raised there; I have been there off and on for thirty-five years.

Q. In what business at the present time? A. In am in the printing business—job printing business.

Q. How long have you been in that business? A. Since I came back the last time; a little over four years.

Q. Do you know Major P. L. Barrington of San José? A. Yes.

Q. How long have you known him? A. I guess it is a little over two years.

Q. Do you print a paper called the "Democrat" for him? A. Yes.

Q. You charge him so much for each issue, do you? A. I got it out on a contract; so much an issue.

Q. Now, with reference to the printing of that paper, did you require him to pay for the paper before it is printed—that is, pay for your work? Is that the case, Mr. Harris? Did you require Mr. Barrington to either pay for or furnish security for the printing of the paper before it is printed? A. Yes.

Q. Has Mr. Edwards ever guaranteed the payment for any issues of that paper since Mr. Barrington has been its editor? A. Yes, I think he has.

Q. Did Mr. Edwards personally ever pay you any money for that purpose? A. Well, when I first commenced doing work for Mr. Barrington, and did not know how he stood financially, I did not know whether he was responsible or not. I said to him when I first figured on it—I said to him, "I am making a close price on this, and I want to be absolutely certain whether I will get my money—no chances at all." "Well, I will see you will get your money; I will see you get your money." I said, "Very well; I will go ahead and make the figures that way."

Q. Mr. Edwards said that? A. No, sir; Mr. Barrington said that. I didn't see Mr. Edwards at all.

Q. Did Mr. Edwards say he would see you got your money; if Barrington did not pay you he would? A. As soon as I got his copy ready for the first issue I told him I required a deposit, or something of that kind, or security, and he took me over to Mr. Edwards' office, and Mr. Edwards said to go ahead. He said: "I will pay for the first two numbers of the paper."

MR. RICHARDS: When was that; how long ago was that? A. That was when the paper was first issued.

Q. How many months ago, or years? A. The paper is a year old; or about a year old now.

MR. MCPIKE: Did Mr. Edwards ever pay you any balance on those first two issues of the paper? A. Not on the first issue—the first issue was all paid for.

Q. On the second issue? A. Yes, I think he did.

Q. How much? A. He did pay a small balance, but I wouldn't say whether on the first or second issue.

Q. He paid you a balance of nine dollars? A. Yes.

Q. How much was the cost of issuing the paper—each number? A. Well, it varied.

Q. What was the average? A. Somewhere in the neighborhood of twenty dollars. Part of the time I set it in larger type than others. It run from seventeen and a half to twenty and a half a week for printing it.

Q. Do you recollect when a caricature in your paper, or in that paper, was published of J. J. Owens, of San José, represented as Dr. Jekyll and Mr. Hyde? A. I remember when there was a caricature or cartoon published in that paper.

Q. Did you object, as a printer, to publish that at first, on the ground that it was libelous? A. I think I did.

Q. Did Mr. Edwards say to you that he would see you through if there was any libel suit over it? A. Before I answer that question—well, in the end, that is what it amounted to.

Q. Did he or did he not say that? A. He did.

Cross-Examination.

MR. RICHARDS: Mr. Harris, you are familiar somewhat with the circumstances under which that "Democrat" was first published, are you not, as a printer? A. Well, only this way: that I went in the printing business, and business was not any too brisk. When the first number came out it was published in San Francisco. I thought it ought to be published in San José, and I offered to do it.

Q. You wanted to get the business? A. Yes.

Q. The fact is, Mr. Harris, that Mr. Barrington had been working for Mr. Owen? A. I do not know it, only according to his say.

Q. Do you know it as a matter of current information there? A. No, sir; only what I might have heard from Barrington afterwards. At the time I did not know.

Q. You do know that between the Major and Mr. Owen some controversy had arisen, which led him to publish this little paper, a joke upon Mr. Owen? A. No; I will state that I did not understand such to be the case.

Q. The "Democrat" commenced attacking Owen; that is a fact? A. Yes.

Q. As soon as it was issued? A. No; I do not know as soon as it was issued—very soon afterwards.

Q. The numbers you referred to contained those attacks? A. Yes.

Q. That is about a year ago, you say? A. Yes, about a year ago.

Q. And the cartoon referred to by Mr. McPike—you rather objected to publishing that cartoon for fear of a legal proceeding? A. I did.

Q. And you went to Mr. Edwards in reference to the matter? A. No, sir; I didn't really go to him, I objected to publishing it. And after the paper was all up, and the proof was taken, I told the pressman to stop the press; not to go ahead. I didn't want for the sake of twenty, or twenty-five dollars a week, to put myself in a position to be sued for libel.

Q. At any rate, you went to see Mr. Edwards, and he agreed to guarantee you against a suit? A. That is about it.

Q. As a matter of fact, Mr. Owens about that time had been assailing Mr. Edwards, had he not? There was a controversy going on in town in which Mr. Owens had been assailing Mr. Edwards?

MR. MCPIKE: I will admit it.

A. My idea or understanding of it was that the "Phoenix" was assaulting a corporation known as the Electric Improvement Company, of which Mr. Edwards was manager.

Q. You knew that Mr. Edwards about that time had suits against the "Phoenix," or against the company? A. Yes.

Q. On account of these assaults a libel suit for damage was commenced against it? A. I think he brought a libel suit and got damage.

Q. It was just at this time that you say Mr. Edwards guaranteed this publication which assaulted Mr. Owen? A. He did not guarantee the publication.

Q. Guaranteed you against libel in case you did publish it? A. Yes. My understanding of it was that his people would take and employ counsel to defend me, and it wouldn't cost me a cent if I went ahead and published it—if I got into a libel suit for publishing it.

Q. You say, also, that Mr. Edwards at that time agreed to be responsible for the publication of the first two numbers, or the cost of publication? A. Yes.

Q. And that as a result of that guarantee he had to pay a balance of some nine dollars on one or the other? A. Yes.

Q. Do you remember whether or not Mr. Edwards, at the time he paid you those nine dollars, declared that that ended his liability for any further publication of the paper? A. Yes, when I think, he paid me the nine dollars—in fact I did not get my nine dollars for two or three weeks afterwards. I think Mr. Edwards was away, and when I went in there he told me, or he told his bookkeeper, to give me nine dollars. I went in some two weeks afterward to collect the balance. I saw Mr. Edwards, and told him that there was nine dollars the Major had not paid yet, and of course I looked to him for the payment of it. He said that's all right; he said that settles everything up. I told him yes, and he told his bookkeeper to give me nine dollars, and he also said to me at that time: "Now, that settles all matters as far as I am concerned." I told him yes.

Q. That ended his guarantee? A. Yes.

Q. Has Mr. Edwards ever, since that time, guaranteed the cost of issuing this paper or pay you any money thereon? A. No.

Q. That is about a year ago? A. Between ten months and a year ago. It was somewhere about a year ago.

Q. The paper has been published ever since? A. Yes.

Q. And you have done the printing? A. I have done the printing.

MR. MCPIKE: When was the cartoon printed? A. It was soon after the paper was started; the third or fourth issue, something like that.

MR. BLEDSOE: At that time, when he told you that he would secure you from any libel suit, did he express any particular friendship for Mr. Barrington, or was it on account of his enmity towards Mr. Owen? A. I guess you have pretty near struck it.

Q. Struck what? A. The way I took it, it was a fight, Owen on one side and those people on the other.

Q. Edwards on the other? A. Yes.

Q. Not a very harmonious community down there at San José? A. About the same as other communities I guess. We have a little more misunderstanding once in awhile.

MR. BULLA: How long did you say you have lived in San José? A. I was born and raised there.

Q. You know everybody there pretty well, do you not? A. I know all the business people. At one time I knew everybody.

Q. Do you know anything about the general reputation of Mr. Barrington there for truth and veracity? A. Well, I know from what is said.

Q. That is what I mean. Have you ever heard his character in those matters discussed by the people generally? A. Well, nothing more than he likes to tell big yarns, or something of that kind.

Q. The general impression is he likes to tell big yarns? A. And talk about himself.

Q. Do people talk about him generally as though they considered him a truthful man? A. As I said before, it was not so much as I know about the matter as to his truth, except he likes to make himself important.

MR. CHAIRMAN: What is his general reputation in the community in that regard? A. As far as I know it is not the best.

MR. BULLA: Do you know anything about Mr. MacKenzie's general reputation for truth? A. No; I do not.

Q. Have you ever heard it discussed by the citizens down there? A. Only since it has been started here in the investigating committee. I only seen what the papers said about it.

Q. What does the general feeling seem to be in that regard with reference to Mr. Barrington? A. According to the papers—

Q. No, what do the people say generally about him? A. Only what I have seen in the papers.

Q. I thought you said since this investigation was started they had been discussing it down there. You never heard them say anything about Mr. MacKenzie at all? A. No, sir.

Q. Have you ever heard the people down there discuss the character of Mr. Edwards for truth—as to what his reputation is generally? A. No; not particularly.

Q. Did you ever hear it discussed? A. I have heard it discussed in a political way, that he was a kind of a political leader, or something of that kind.

Q. Did you ever hear people say they would not believe him, or that he would tell the truth? A. I don't think I have.

Q. Do you know Mr. Edwards? A. I know him that way; I had two or three business dealings with him in regard to the "Democrat." I didn't know him before, except I would see him on the street.

MR. CHAIRMAN: Do you mean to say that you do not know what Mr. Edwards' reputation is in the community for truth and integrity? A. I do not think I could say whether good or bad. I know his reputation as a political man.

Q. Not as to politics. You could not say as to that for truth and integrity? A. No; I would not want to risk my reputation on what I know or heard about him unless I know right one way or the other. I wouldn't want to say.

MR. BULLA: You say you know his reputation with reference to political matters? A. Yes.

Q. What do people say as to that generally, where political questions are involved? A. Well, my idea is that he generally goes in to win whenever he tackles anything.

Q. Explain what you mean by that? A. Well, he has got a crowd around him, and understands human nature and friends, so that he shapes his fight so he comes out on the winning side generally. Take the electric light question down there; they had a big fight, but he finally got the contract.

Q. Do you think that his methods were always exactly correct in such cases? A. Well, now taking hearsay evidence and what the general opinion is down there, I do not know as I do.

MR. CHAIRMAN: I would like you to state distinctly in regard to the matter of truth and integrity. Mr. Edwards is a man well known in the community, and I should think you would be able to state to this

committee what his reputation in the community in which he lives is so far as truth and integrity are concerned.

MR. RICHARDS: You refer to his general reputation for truth?

MR. CHAIRMAN: Yes, his general reputation—the general verdict of the people in the community in which he lives? A. Well, I would say that his reputation is average good. I do not say it was of the best.

MR. BLEDSOE: Do you think a jury in San José would believe his testimony? A. You understand, too, it is pretty hard for a witness that has only had very little dealings with a man, and that dealing has always been correct; and I do not know as I had any real claim on him for him to pay me that balance except his word; he gave me his word that he would stand good for those issues, and he paid it.

Q. It is not your opinion of the man, it is a question of general reputation; what do you hear people say in the community. What is his general reputation in the community in which he lives, from what you have heard people generally say about him; do you believe that a jury in San José would believe Mr. Edwards' testimony in a case? A. Yes, I do.

MR. BULLA: Would that be true in case a political question was involved in it—if there was some political fight in which he was engaged? A. I believe I would take his testimony all right, unless it was very strongly impeached.

MR. BLEDSOE: Do you believe that if in the question under investigation, where Mr. Edwards was interested in gaining a political point, do you believe that he would testify to a falsehood in order to gain it; that he would swear to a falsehood under oath? A. No, I do not. I believe that he would do everything to gain his point, but I do not hardly think that he would do that. From what I have heard I do not believe he would hesitate to use money, or everything else of that kind, to gain his point. I do not think I ever heard his reputation attacked that way, that he would swear to a falsehood.

W. M. WILLIAMSON.

Called and sworn, testified as follows:

MR. MCPHKE: You are, or have been, a Justice of the Peace? A. Yes; in San José.

Q. From 1881 to 1891—ten years? A. No.

Q. How long? A. I was Justice of the Peace down there altogether about ten years. My time expired last time on the first Monday of January, two years ago.

Q. You have lived there in that community a great many years? A. I have lived there since the 10th of March, 1856.

Q. And very well acquainted? A. Very well acquainted.

Q. Know a great many people there? A. Well, I used to know everybody, but a great many strangers have come in.

Q. Do you know Mr. H. J. Edwards? A. I do.

Q. Do you know his reputation in that community for truth, honesty, and integrity? A. Well, sir—

Q. Do you know it; yes or no? A. I do.

Q. Is it good or bad? A. It is bad.

- Q. Do you know Johnnie MacKenzie? A. Yes.
- Q. How long have you known him? A. Ever since he was a little boy about so high.
- Q. What is his general reputation in the community for truth, honesty, and integrity? A. Bad.
- Q. Do you know Major Barrington? A. No, I do not know him. I know him when I see him, but I am not acquainted with him.
- Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. Yes.
- Q. Is it good or bad? A. Bad.

Cross-Examination.

MR. RICHARDS: What is your present occupation? A. Well, sir, I am in no business, but I have some stock.

- Q. Stock of your own? A. Yes.
- Q. What kind of stock? A. Horses, mares, and colts.
- Q. How long have you been in the stock business? A. Well, I have this mare, and raised these colts.
- Q. Your stock raising business then consists of one mare and some colts? A. Yes.
- Q. You say that you know the reputation of Mr. Edwards in the community for truth, honesty, and integrity. A. Yes.
- Q. And you swear that it is bad? A. I do most positively.
- Q. Who did you ever hear discuss the reputation of Mr. Edwards for truth? A. I have heard William H. Mann say he would not believe him under oath.
- Q. Now, Mr. Mann has said that he would not believe him under oath? A. Yes. I have heard Henry Phelps and I have heard William B. Hardy and I have heard a great many people say so. I know I have heard it as common talk.
- Q. Who is Henry Phelps; is he the witness who came here last night and testified? A. I do not know, sir; I was not here.
- Q. At any rate, Henry Phelps the real estate man? A. Yes.
- Q. You say you have heard William B. Hardy state that he would not believe Mr. Edwards under oath? A. I did, sir.
- Q. Now, outside of these three men, name anybody else. A. Well, I have heard a great many people talk, and I never heard any one talk about it to me say that they would believe him under oath.
- Q. Do you remember the case of Edwards against the Times Publishing Company, tried last year? A. Yes.
- Q. You remember that fact? A. Yes, I do.
- Q. Do you not remember that twelve of the most respectable business men of San José took the stand in that case—the case of Edwards against the Times Publishing Company for libel? A. I do not know anything about that. I can go to San José and get men that belong to this gang that say they will believe him, and have got others in the community that will swear just as fast the other way.
- MR. BLEDSOE: Isn't it a fact, Mr. Williamson, that there is a political faction in San José? A. Yes, that is a fact.
- Q. One opposed to Mr. Rea and his friends and one in favor of them? A. I do not take Mr. Rea in that category; I am talking about Mr. Edwards.

- Q. Then one opposed to Mr. Edwards and his friends and one in favor of Mr. Edwards and his friends? A. Yes.
- Q. And isn't it a fact that those factions are very, very bitter against each other? A. They are.
- Q. Which faction do you belong to? A. I do not belong to either. I do not vote for a man that I do not believe is entitled to my support.
- Q. What are your politics? A. I am a Republican. If you want to know anything about Mr. Edwards, certainly I can tell you about it.
- Q. You feel very bitter for, and have very bitter feelings against, Mr. Edwards? A. Well, I did.
- Q. You have a very strong personal dislike for him? A. Yes, that is correct; and I have reasons to have.
- MR. McPIKE: What is your reason? A. My reason is, because he has acted as mean towards me as man could. He got mad at me because I would not decide a case according to his law and evidence, in order to cheat a man out of his debt.
- MR. BLEDSOE: And that personal difficulty between you and Mr. Edwards is the basis of your personal dislike? A. No, sir; it is not.
- MR. CHAIRMAN: I want to ask you how long you have known Mr. Edwards? A. I have known him and I have known of him ever since he has been in San José.
- Q. How long has that been? A. Probably fifteen years or more.
- MR. McPIKE: I understood you to say that Mr. Edwards got mad at you because you would not decide the case in his favor, and cheat some man out of his money which he owed him? A. That is exactly it. They could not come into my Court and tell me how to decide a case before it was tried, and this man knew it.
- MR. RICHARDS: Was I in that case? A. No, sir; but you are one of the crowd.
- MR. BULLA: You have stated also that Mr. MacKenzie's reputation was bad? A. It is.
- Q. Have you any personal feeling against him? A. None in the world.
- Q. And Mr. Barrington; you say his reputation is bad? A. It is. I judge from people. I am not personally acquainted with Barrington.
- Q. You have no personal feeling against Barrington? A. No, sir; I am not acquainted with him. I have seen the man on the street. I do not know whether I have ever spoken to the man in my life.
- Q. Your testimony as far as that is concerned is based entirely upon what people say about him? A. Yes, and the other man, too.
- MR. BLEDSOE: How long has it been since that controversy in Court? A. A year and a half ago, probably.
- MR. RICHARDS: You speak of Mr. MacKenzie and his reputation; do you mean to say that you are friendly to Mr. MacKenzie? A. I am not unfriendly.
- Q. You class Mr. MacKenzie as one of Mr. Edwards' friends down there? A. No, sir.
- Q. He is not in that category? A. No, sir. I understand Mr. MacKenzie is a friend of Rea, and that is pretty near all of Mr. Edwards. He would not be where he is now if it was not for Mr. Rea, and you know it.
- MR. BULLA: You stated that the difficulty in Court was a year and a half ago? A. Yes.

Q. You went out of office in January, 1891? A. It was before I went out of office. It is two and a half years ago, may be more. I do not recollect when that case was tried. There were two of them.

MR. EDWARDS: The title of the case was Edwards against the old gas company? A. There was one suit against the gas company and one suit by a man named Gabrello against Edwards for vegetables that his family eat.

Q. And both suits you decided against Mr. Edwards? A. He appealed them, and did not dare to go to trial.

Q. You know that? A. Yes. He told me he went and settled them. He did not go before Judge Spencer with them.

MR. McPIKE: He took an appeal and settled the cases before they got there? A. Yes. He settled them before they went to trial.

DR. W. H. ROBINSON.

Was here called and sworn as a witness, and, by leave of the committee, was allowed to make a statement in regard to certain statements made by J. W. Rea as to certain matters relative to ferry commutation tickets, and the settlement of said case.

ADAM RIEHL.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside? A. San José, Santa Clara County.

Q. How long have you lived there in that city? A. About seven years in the city and twenty-six years in the county.

Q. Have you ever held any office there? A. Yes.

Q. What office did you hold? A. Six years, City Council; two years, Mayor of the City of Gilroy; and have been here to the Legislature two sessions.

Q. You represented Santa Clara County in the Assembly? A. Yes.

Q. And you were Mayor of Gilroy? A. Yes.

Q. And a member of the City Council of the City of San José? A. No, sir; Gilroy.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known him? A. About seven years.

Q. Do you know his general reputation for truth, honesty, and integrity in San José? A. Yes.

Q. Is it good or bad? A. It is bad.

Q. Do you know Johnnie MacKenzie? A. Yes.

Q. How long have you known him? A. Somewhere over ten years.

Q. Do you know his general reputation in that community for truth, honesty, and integrity? A. Yes.

Q. Is it good or bad? A. It is bad.

Cross-Examination.

MR. RICHARDS: You are a member of the San José Light and Power Company? A. Yes.

Q. And have been for the last three years? A. I was President three years, and since last June I have been Vice-President.

Q. Mr. Edwards is the Secretary and Manager of the Electric Improvement Company? A. Yes.

Q. Between these two lighting corporations there has been an active business rivalry going on for the last three years? A. I will answer that in this way.

Q. Answer the question? A. Mr. Edwards was manager in one department in our company before he went into that other company, and he was discharged for certain purposes from the company, and there was no rivalry at that time.

Q. And there was no company at that time? A. No, at that time in this town. What you have reference to all commenced after his discharge.

Q. Prior to that time Mr. Edwards had been the Superintendent of a company known as the San José Gas Company? A. Yes.

Q. For years? A. Yes, before June, 1889.

Q. And you have been one of the stockholders in the company known as the San José Brush Light Company. A. Yes.

Q. And between the San José Gas Company and the San José Brush Light Company there had also been an active business rivalry down there? A. No.

Q. Didn't they both contest for the city lighting? A. They may have; that was before my time.

Q. Well, you were a stockholder in the company? A. I didn't live in San José at that time.

Q. You were a stockholder? A. Yes.

Q. In the Brush Company. A. Yes.

Q. And Mr. Edwards was the Superintendent of the opposing company? A. Yes.

Q. That was so when the two companies came together and formed a monopoly in lighting there, known as the San José Light and Power Company, and you discharged Mr. Edwards? A. No, sir; he was Superintendent of the gas department.

Q. How long was he in after he was elected? A. Until he proved himself disqualified for the position.

Q. It was just eighteen days? A. No, sir; he was in there a month or a month and a half.

Q. And during that month and a half after being Superintendent of the San José Gas Company for some years he showed his disqualification, as you claim, and was discharged? A. He was discharged for other reasons—for untruth. If I have my own way I can explain it so these gentlemen could understand. I was President of the company, and he was one of my subordinate officers. He was in the gas department. There was certain rules to be obeyed and certain things to be done. The reason he was discharged, I brought the matter myself before the Board of Directors, because of his untruth in making certain statements to me.

Q. In other words, a certain controversy arose between you and him? A. No, sir.

Q. You were President, and he was Superintendent? A. I have explained that Mr. Richards, and there is no use to repeat it.

Q. You were President, and he Superintendent. A. Yes.

Q. And a controversy arose between himself and you? A. Not at all.
Q. With reference to the observation of certain rules? A. No, no controversy.

Q. On what did it arise? A. On matters pertaining to the company's interest. He misrepresented to me certain things which he should not have done.

Q. And a controversy arose between you? A. No controversy.

Q. What did you do? A. We were making gas.

Q. I don't care about you going into that? A. I want to explain it. I asked him why it was that we could not buy oil from a certain company. I asked him how much oil there was on hand, and he said there is plenty yet for two or three weeks. In a day and a half afterwards, he sends me a telephone from one office to the other—that was Saturday afternoon—he sends a telephone, we have to have oil for Monday to make gas. That is one of them, and then there are other matters.

Q. Because he made a mistake in estimating the amount of oil that was on hand a trouble arose between you; isn't that it? A. No, sir; that was not it.

Q. Is that the reason you had him discharged? A. That was, and many other reasons together.

Q. That was one of them? A. If you want to go into the details, of course it will take us a long while.

Q. Since Mr. Edwards' discharge he has been manager of another lighting company in that city? A. Yes.

Q. That is a fact? A. Yes.

Q. And between that lighting company and your lighting company there has been an intense and bitter business rivalry? A. There has been a business rivalry.

Q. And it has been very bitter and intense, isn't that so? A. Yes.

Q. And resulted in a number of law suits between the two companies, and between individuals in the two companies? A. Yes.

Q. In fact, you, yourself, were a plaintiff in one of those suits, against the City Council, and Mr. Edwards, and his company? A. I was plaintiff, in behalf of the company.

Q. And the Court decided that case against you? A. Yes; and the case is pending yet before the Supreme Court.

Q. And during the last three years some one party has been victorious in one suit, and some in another? A. If you want to know the whole case that happened about this, I will tell you. Yes, I know.

MR. RICHARDS: I want to show the animus of the witness? A. No animus about it.

Q. Are you a friend of Mr. Edwards? A. I am no enemy of anybody.

Q. Are you a friend of Mr. Edwards? A. I have no animosity.

Q. Answer the question, please; are you a friend of Mr. Edwards? A. I guess I am as much a friend of his and he is of mine.

Q. Are you a friend of Mr. Edwards? A. I do not know what you mean by it. You might ask me whether I am a friend of yours just the same way. You made more trouble than some of the others already. Why didn't you ask me whether Mr. Rea has anything to do with it.

Q. This controversy which you speak of has not only been conducted in the Courts, but has been conducted in the newspapers? A. Yes; your side owns some of the newspapers.

Q. And didn't your side pay a newspaper one hundred dollars a month to attack Mr. Rea and Mr. Edwards and the Improvement Company? A. They had to do it in self-defense.

MR. BLEDSOE: Did they do it? A. They hired advertisements.

Q. Fighting Mr. Edwards and Rea? A. No, sir. The company wrote messages and sent them before the Council, and did not attack any individual party.

MR. RICHARDS: You were not paying a paper one hundred dollars a month to attack Mr. Edwards when he got a judgment against you? A. No, sir.

Q. Wasn't you a stockholder in that paper at that time? A. I had one share in it.

Q. And the other members of the Light and Power Company also had shares? A. No, sir; only about two or three.

Q. At any rate, it was the same newspaper which you had been paying one hundred dollars? A. We had to be in the business; of course we were slandered, and you know that you wrote many articles yourself.

Q. Was you slandering back? A. No, we had it correct. We had it correct enough, but we were misrepresented.

Q. And you never said anything about Mr. Rea or Mr. Edwards. A. No, sir; never did them anything of the kind.

Q. Never intimated anything against them? A. No, sir.

Q. Never did? A. No, sir.

Q. Quite positive of that? A. I know it.

Q. And you never said anything about the Electric Improvement Company in that paper? A. I do not know what the paper said.

Q. Your business rivalry is still going on, is it not? A. Yes, to some extent; not so much.

Q. You are Vice-President of the Light and Power Company now? A. Yes.

Q. Mr. Edwards is the manager of the Electric Improvement Company now? A. I do not know.

Q. Don't you know? A. I do not know whether he is now or not.

Q. He was when you came up here? A. I didn't ask him.

MR. CHAIRMAN: Your answer to that is you do not know? A. I do not know.

MR. BLEDSOE: Did you last week? A. No, I did not.

MR. RICHARDS: Have you heard of any change in the management of the company? A. I haven't been informed, and I do not know as they would inform me if they would make a change.

Q. They probably would not send for you? A. I do not know as they would send me any notice.

MR. BLEDSOE: What are your politics? A. A Democrat.

Q. There are two factions in San José in local politics—one the Rea faction and another the anti-Rea faction? A. They are mixed up in local politics.

Q. But there are two distinct factions—one the Rea faction and the other the anti-Rea faction. To which one of those factions do you belong? A. I do not know as I belong to any particular class. I am classed as a Democrat. I vote the Citizens' ticket locally, but take no part in it.

Q. Do you consider in this fight between the two companies that Mr. Rea has something to do with the fight as well as Mr. Edwards? A. Yes.

Q. He had something to do with it? A. Yes; Mr. Rea approached me and didn't want me to discharge Edwards from the company.

Q. Then that fight between those two companies has grown into a personal feeling between the officers of the company? A. Mr. Rea then said if we discharged Mr. Edwards they would start an opposition company.

Q. Then the fight between the two companies which is now going on has resulted in a personal feeling of dislike between the officers of those two companies? A. More or less, yes.

MR. BULLA: And your opinion of Mr. Edwards' character as to truth and veracity is based somewhat upon your personal feelings? A. No, sir; on experience and business myself.

Q. Have you ever heard his character in those respects expressed generally there? A. Yes.

Q. Can you name any one who has ever spoken of him in that respect for truth and veracity in direct terms? A. I heard him swear in Court.

Q. Could you name any one who has made a statement that he would not believe him under oath? A. I have.

Q. Who are they? A. William Meserve, and some other parties. I couldn't now name you the parties. In so much talk a person don't remember everything.

Q. But you say his general reputation in San José for truth and veracity is bad? A. In politics. Yes, we have had business troubles outside; it has been stated by many outside of our company.

Q. Have you any personal feelings whatever towards Mr. MacKenzie? A. None whatever.

Q. You say his reputation is also bad? A. In speaking of it, the citizens have been speaking of it; that is, his general character.

Q. Can you name any one who has stated that they would not believe him under oath, and considered him untruthful? A. I do not know as I can name him now, but there have been persons.

Q. But you cannot name any one? A. Not at the present time; I do not remember the particular parties. I never heard him well spoken of. He is one of those ward politicians.

Q. He is connected with the Rea faction? A. He had been a politician before this started for years.

Q. Do you think that if those two gentlemen whose reputation you say is bad, Mr. Edwards and Mr. MacKenzie, were called as witnesses in a Court of justice, that their testimony would be believed by a jury? A. I would not believe it myself; I do not know how a jury would do.

MR. RICHARDS: You say you are a Democrat? A. Yes.

Q. Mr. MacKenzie is a Republican? A. Yes.

Q. Always been opposed to you politically? A. I am not a politician.

Q. Always been opposed to your party politically? A. I have no feeling on that case. I would not say a man is not a good man because he is not a Democrat.

Q. Mr. MacKenzie is quite active in Republican politics? A. Well, so much as I have heard about him.

Q. It is a fact that he is an active Republican? A. Well, he is more than that.

Q. Well, is he that? A. Yes.

Q. He is an active Republican? A. Yes.

Q. Now, wherever the business of those two companies has crept into politics, local politics, in the last three years, Mr. MacKenzie has been opposed to your company, and the political faction in which you enter? A. That I do not know. He has been a politician ever since I have known him.

Q. Don't you know as a matter of fact that he has been opposed to the political party which your company was represented by in those business squabbles in San José? A. I have no doubt he was.

Q. You believe he was? A. Yes.

Q. Has been quite active in that opposition? A. Yes.

MR. BULLA: You say you are a Democrat? A. Yes.

Q. Do you know Mr. Johnson? A. No, sir; I met the gentleman outside here for the first time.

Q. Do you know how you happened to be subpoenaed as a witness in this case? A. I do not.

Q. Your personal feeling towards Mr. Edwards is not sufficiently known there so that anybody would select you as a witness against them for that reason, is it? A. I cannot account for it myself, unless it has been because it has been in the Court so many times where we have suits; something of that kind. There has no one approached me in this matter, if that is what you wish to know.

Q. I simply want to know if you know how you happened to be summoned as a witness? A. No, sir; I was subpoenaed Saturday evening between five and six o'clock.

MR. RICHARDS: Is it a matter of universal knowledge down there that there is opposition between Mr. Edwards and yourself? A. I pass him on the street and never speak to him, and I don't wish to meet him in any shape or form.

Q. You do not speak to him on the street? A. No, sir.

REUBEN BURDETT.

Called and sworn, testified as follows:

MR. MCPHIE: You reside in San José? A. Yes.

Q. Resided there for twenty-six years? A. Yes.

Q. You are a contractor in business? A. Yes.

Q. You are a Councilman there of the city? A. Yes.

Q. In 1890? A. Yes.

Q. You were Street Commissioner there for some time? A. Yes, from 1874 to 1878.

Q. Do you know Major Barrington? A. Yes.

Q. Do you know his general reputation for truth, honesty, and integrity? A. Bad.

Q. It is bad? A. Yes.

Q. Do you know his reputation, first? A. Yes, I do.

Q. Is it good or bad? A. Bad.

Q. Do you know John MacKenzie? A. I do.

Q. How long have you known him? A. I have known him ever since he was eight years old.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I think I do.

Q. Is it good or bad? A. Bad.

Cross-Examination.

MR. RICHARDS: Do you say you know Major Barrington? A. Yes.

Q. How long have you known him? A. About a year—ever since he has been in town.

Q. And you think he has been in town about a year? A. I think, as near as I can recollect.

Q. He publishes a paper down there? A. I believe he does, and calls it the "Democrat."

Q. Called the "Democrat?" A. Yes.

Q. Do you take the paper? A. Well, he leaves it; I do not take it.

Q. You read it? A. Occasionally; yes.

Q. Is it not a fact, Mr. Burdett, that Mr. Barrington has of late months been devoting some time in reference to lampooning the Council of which you are a member? A. I do not pay any attention to him.

Q. Is it not a fact that he has been lampooning your Council? A. Harpooning.

Q. Harpooning you might say? A. Yes.

Q. And still you are invulnerable to harpoons? A. Yes, I have been whaling.

Q. Is that what you are doing now? A. Yes.

Q. You say you paid no attention to Major Barrington? A. No, sir; we look upon him as being a political adventurer.

Q. You don't pay attention to it? A. No, sir.

Q. In coming to testify in this case you do not permit anything that appeared in that paper to influence you? A. I do not care anything about it.

Q. Your testimony here and your presence here is not at all affected by the fact that he has been assailing you in his paper? A. No, sir; it wouldn't make a particle of difference.

Q. In fact, if you thought his reputation was good and he was assailing you in his paper as bitterly as he has been doing, you still would come here and testify that his reputation was good? A. No, sir; I came here to tell the truth, that is what I came here for.

Q. You would not be at all affected by the fact that he was your antagonist? A. No, sir, for I would consider the source.

Q. And if you thought his reputation was good you would still consider the source? A. I wouldn't pay any attention to it. I wouldn't pay any attention to the article.

Q. Do you say you know Johnnie MacKenzie? A. Yes.

Q. Known him since he was eight years old? A. Yes.

Q. You are a Republican? A. Sometimes I am a Democrat and Republican both, what is called a purifier this last election. We do not have any politics there now.

Q. The fact is that there has been a little controversy going on in San José. A. I do not see what that has to do with MacKenzie. You asked me about MacKenzie.

Q. I ask you if, as a fact, there has not been a little controversy going on in San José between two rival companies that affects politics? A. I do not know; I think the people affect politics, Democrats and Republicans going together. I am acting with the purifiers.

Q. Mr. MacKenzie is not a purifier? A. I do not know what he is.

Q. Do you know he does not belong to that party? A. I do not know what he belongs to; I know I do.

Q. Do you think he supported the purifiers last election? A. I do not know what he did; I do not know how anybody voted only myself.

Q. Do you know what his sentiments were on the subject? A. I never heard him express them.

Q. And you now say you do not know that MacKenzie was not in favor of the party of which you are a member? A. I do not know; I never questioned him.

Q. Has Mr. MacKenzie and yourself been working together in politics for the last two or three years? A. No, sir. I do not mix in the kind of politics he does.

Q. You and he do not mix in politics? A. No, not much.

Q. In other words, you are against each other? A. I do not know that he is on the right side.

Q. Your side is always right? A. I might make a mistake and get on the wrong side.

Q. You think that Mr. MacKenzie's reputation for truth—not for politics—is bad? A. I am talking of politics now.

Q. I am not talking of politics. A. I do not know anything about it; I never had any business with him.

Q. You are speaking of politics when you speak of his reputation? A. No, sir; I am not.

Q. When you come here and say that his reputation for truth, independent of politics altogether, is bad, do you mean that? A. Yes. When he has got Jim Rea in the matter I think he would say anything. I do not think he is truthful.

Q. You think that Jim Rea exercises such an influence over him that while he was ordinarily truthful, he would not tell the truth on that account? A. He is one of Mr. Rea's lieutenants, and gets his instructions that way.

Q. Do you think Mr. Rea would instruct Mr. MacKenzie to come to the stand and swear to a lie? A. I shouldn't think he would, because he was under oath. But they run politics together.

Q. You do not think Mr. Rea would do anything of the kind, and you do not mean what you say when you say Mr. MacKenzie would swear to a lie or do anything for Mr. Rea? A. Outside of Court.

Q. If Mr. MacKenzie came on this stand and took the solemn oath to tell the truth, would you believe him? A. Whom?

Q. Mr. MacKenzie? A. I might, of course.

MR. BLEDSOE: You say there are no politics in San José now? A. No, sir.

Q. You are trying to purify the political atmosphere? A. Democrats and Republicans together.

Q. Who is on the other side—what are you trying to purify? A. Rea makes politics his business, and the business men, Democrats and Republicans, have gone in together.

Q. Who is the disreputable part of the community in politics? A. What is called the gang.

Q. Who is the leader of the gang? A. Supposed to be Jim Rea.

Q. And Mr. MacKenzie you consider one of his lieutenants? A. Yes.

Q. Do you know Mr. Edwards? A. Yes.

Q. How long have you known him? A. Ten or twelve years.

Q. Do you know what his general reputation in San José is for truth, honesty, and integrity? A. Well, I will tell you the truth, the same as MacKenzie's, in politics.

Q. Outside of politics—just lay politics aside? A. I do not know; I never had any business with him outside.

Q. Have you not heard people discuss his reputation for truth outside of politics? A. Only heard it from a political standpoint.

Q. That is all? A. That is all.

Q. If Mr. Edwards was sitting where you are now and was under oath, do you think that San José people would believe him—believe his testimony? A. I should suppose he would tell the truth only under oath.

Q. If he were testifying in a San José Court before a jury of twelve San José men, do you think they would believe him under oath? A. I would not know whether they would or not.

Q. Would you believe him under oath? A. Well, I could; if the man came in here without Rea—

Q. If he were testifying before this committee under oath, just as you are now, would you believe his testimony, laying politics aside? A. Yes, I think I would.

Q. About how long have you known him? A. About ten or twelve years.

Q. You have both lived in the community together? A. Yes.

MR. BULLA: If a matter concerning which he was testifying under oath was a political one, what would your answer be—would it still be the same, that you would believe him? A. No, sir; I would look upon it as being very doubtful.

MR. RICHARDS: Do you mean to say that Mr. Edwards, in a personal matter in which he was not interested, would swear to the truth, but that in a political matter in which he was not interested would swear to a lie; is that your statement? A. I think he would falsify considerably in order to help Rea and that crowd.

Q. You think he would? A. Yes, I do.

Q. You think, then, that while in personal matters he is so truthful a man that you would believe him under oath, that he would perjure himself in a political matter; is that it? A. I do not know as he would perjure himself, but I think he would do most anything in politics in order to gain his end.

Q. But suppose he had no end to gain, and the question was a political question, do you believe he would swear to a lie? A. That is what they say when he has an end to accomplish. In San José he is a Democrat one day and a Republican another. He runs the Democratic primaries and Republican primaries and all the primaries.

Q. Are you speaking from your own knowledge? A. I know it.

Q. Is it not a fact that Mr. Rea and his friends elected you Councilman? A. They made a mistake, then.

MR. BULLA: Have you ever had any personal difficulty with Mr. Edwards? A. No, sir.

Q. Or with Mr. MacKenzie? A. No, sir.

Q. Your testimony is not influenced in any way by your personal feelings towards them—it is based entirely upon what people say about them? A. Yes, I leave all those personal matters outside.

MR. RICHARDS: While you have been in the Council this controversy between the lighting companies has come up before the Council? A. Yes, very frequently.

Q. And it has been frequently asserted that you were voting in favor of one company against the other? A. When I voted, I voted for the people that I thought right and just.

Q. That was generally with the Light and Power Company? A. I voted for the right. I voted that way because I thought it was right.

Q. You always voted on that side of the controversy, and it has been right? A. I did the voting.

Q. Your opinion is that their side of the controversy was right, and you voted for them? A. I voted for the people.

MR. CHAIRMAN: In the first part of your examination the question was asked you what the reputation of Mr. Edwards was for truth and integrity in the community in which he lives, and your answer was, "Bad." A. Truth, I didn't speak of anything only truth.

Q. And your answer was, "Bad." A. Politically.

Q. That is what I want to know. A. That is what I meant, politically.

Q. That is what I was going to ask you, whether in a general way bad, or whether you meant politically? A. In politics it is bad.

Q. You know what is meant by reputation for truth and integrity? A. Well, I ain't speaking of integrity and honesty. I expect he is honest; I never knew to the contrary.

Q. What I want to arrive at is this: You testified that his reputation in the community for truth was bad? A. That is politically. I qualify myself to politics.

Q. You say now you do not mean his general reputation? A. I mean in politics.

Q. Only in politics? A. That is it, sir.

MR. RICHARDS: I understand, Mr. Burdett, that a man may be honest, and have a reputation for integrity and for truth in all his personal affairs, and that his reputation and his character in those respects may be good; and that, as far as Mr. Edwards is concerned, they are good, but that politically his reputation is bad? A. That is it.

Q. That is your whole statement. A. Yes.

Q. And your idea is that a man can be good personally? A. Yes.

Q. And bad politically? A. Yes.

MR. BULLA: Do I understand you aright to say that his reputation was good, aside from politics? A. That is it.

Q. Or did I understand you to say that you do not know anything of his character outside of politics? A. No, sir; I never had any dealings with him in any way.

MR. MCPHIE: There is not much attention paid to him outside of politics; he is engaged in political matters nearly all the time? A. Yes; he was raised First Lieutenant.

Q. And has not much of a business there outside of politics? He is Superintendent of the Electric Improvement Company? A. Manager.

Q. That's his whole business? A. Yes.

Q. And that lighting company is furnishing light to the city? A. Yes.

Q. And they have politics in the election of City Council? A. Yes.

Q. And that is Mr. Edwards' business? A. Yes.

Q. Then your acquaintance with him has been formed in that way?

A. The last few years.

MR. BLEDSOE: How is the contract for city lighting let there? A. The contract is made for five years.

Q. Then why do you say politics enter into the matter of lighting?

A. The contract was let to the highest instead of the lowest bidder for five years—let to the highest instead of the lowest.

Q. Were you a member of the Council when that was made? A. No, sir; I was not. I wish I had been.

MR. McPIKE: The company to which Mr. Edwards belonged was the highest bidder? A. Yes.

MR. RICHARDS: And the Court sustained that contract after the fullest investigation? A. I do not know.

Q. Don't you know that as a fact? A. I do not know.

Q. Then you have lived in San José for the last five years, and you do not know that the Superior Court of San Mateo County, in Riehl against the Lighting Company, sustained that contract after the fullest investigation; don't you know that? A. I know that he was the highest bidder.

Q. Don't you know that the Court sustained the contract in that case, after the fullest investigation? A. No.

KARL KLEIN.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside? A. San José.

Q. What is your business? A. General business agent.

Q. How long have you resided in San José? A. About twenty years.

Q. Do you know Major Barrington? A. I do.

Q. How long have you known the Major? A. Perhaps two years.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do.

Q. Is it good or bad? A. Bad.

Q. Do you know Johnnie MacKenzie? A. I do.

Q. How long have you known him? A. Perhaps fifteen years.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do.

Q. Is it good or bad? A. Bad.

Q. Do you know H. J. Edwards? A. I do.

Q. Do you know his general reputation there in the community for truth, honesty, and integrity? A. Well, I cannot say that only so far as his connection with Rea is concerned.

Q. You say where Mr. Rea is concerned you know his general reputation for truth, honesty, and integrity? A. Yes.

Q. What is that reputation, good or bad?

[Objected to.]

MR. BLEDSOE: Was that simply in connection with politics? A. Yes.

Q. Is it good or bad? A. Well, the general reputation—his general reputation—is that he would do anything that Mr. Rea would request him to do; that he is in politics with Mr. Rea, and he would do anything Mr. Rea would request of him.

Q. If Mr. Rea was interested in a controversy between himself and another man—not political, but was directly interested in maintaining what he might have asserted broadcast—and called upon Mr. Edwards to tell a story which was in all respects true, do you think Mr. Edwards would do as Mr. Rea asked him? A. I think he would.

MR. BLEDSOE: If Mr. Edwards was a witness, from all you know of Edwards and from all you know of his general reputation in San José, would people generally say about him, if he were a witness in the case where Mr. Rea's interests were at stake or presumably at stake—do you think that a jury of San José people would believe Mr. Edwards under oath, not from what you personally know, but what you have heard people say about him? A. I do not think they would, unless his testimony was corroborated; that is my opinion.

Q. You base that opinion upon what you have heard people say in San José? A. Yes.

Q. What are your politics? A. I am a Republican.

Q. It is a fact, is it not, that in San José there are two factions among the Republicans there, one a Rea faction and the other an anti-Rea faction? A. I believe so.

Q. Which faction do you belong to? A. I am one of the anti-Rea Republicans.

Q. You are generally known there as an anti-Rea man? A. The anti-ring it is called there.

Q. You have a personal feeling, have you not, against Mr. Rea? A. No, sir; I have not.

Q. Do you like him? A. I think he is a hail fellow well met.

Q. A particular friend of his? A. Yes.

Q. A personal friend of Rea's? A. Yes.

Q. Are you a friend of Mr. Edwards? A. Not particularly so. I am acquainted sufficiently with him to say, how do you do.

Q. You have a very deep abhorrence of Mr. Rea's methods in politics? A. Yes.

Q. And yet notwithstanding that you are a personal friend? Outside of politics, I certainly am.

Q. You consider his methods dishonorable, do you not, in politics? A. I do.

Q. He uses methods which you would not use? A. I do not think I would.

Q. And yet you say you are his personal friend? A. Well, we were not intimate friends—we were social friends.

Q. Notwithstanding your abhorrence of his political methods, you still are willing to consider yourself his personal friend outside of politics? A. To a certain extent, yes.

MR. HURLEY: You do not meet with Mr. Rea frequently? A. Not very; no, sir.

Q. You do not move in the same social circle? A. No, sir.

MR. BULLA: Do you know how you happened to be subpoenaed as a witness in this case? A. I do not.

Q. Your feeling concerning these people, or opinion of these people whom you have testified about, is not sufficiently well known to enable people to select you to testify? A. I could not say whether I have expressed my opinion.

Q. You have heard other people express an opinion? A. Yes.

Q. Can you name any? A. No; I do not know as I could name any particular person. It is a common report on the street.

MR. RICHARDS: You were a witness against Mr. Rea in the case of Rea against Wood? A. I believe so; yes.

Q. Your attitude with reference to Mr. Rea is quite well known, owing to your boldness in expressing your views? A. Yes.

Q. And your antagonism to him? A. Politically, yes.

Q. Do you think, Mr. Klein, that M. Rea would ask Mr. Edwards to come upon this stand and perjure himself? A. No; I do not think he would ask him to perjure himself.

Q. Do you think he would ask Mr. Edwards to come upon this stand and swear to a falsehood? A. No; I do not think he would ask Mr. Edwards to swear to a falsehood.

Q. You say you know Mr. MacKenzie? A. I do.

Q. Mr. MacKenzie had been a Republican down there, in politics? A. Claims to have been, yes.

Q. And has been quite active as a politician? A. Yes.

Q. You and he have been opposed to each other? A. Not if I take his statement for it.

Q. What is the fact? A. The fact is, however, that he has opposed me.

Q. And you have opposed him to a certain extent? A. Yes.

Q. And do you know? A. To a certain extent, yes.

Q. You say you belong to what is known as the anti-Rea faction in politics, while Mr. MacKenzie belongs to what is known as the Rea faction? A. Yes.

MR. BLEDSOE: Leaving politics all aside, if Mr. Edwards were a witness before a San José jury, basing your opinion upon what you have heard people generally say about him, do you think that a jury would believe his testimony? A. Well, I believe I have stated that I do not think they would, unless his testimony was corroborated; that is, if Mr. Rea was interested.

Q. I say, leaving that all aside—laying Mr. Rea aside, and politics aside? A. Well, generally, think they would; yes.

MR. RICHARDS: You think, then, that his general reputation for truth, honesty, and integrity is good? A. Well, I never heard it discussed at all: I never have heard anybody express any opinion as to it—as to outside matter, as to matters in which Mr. Rea was not interested. I believe I was asked my personal opinion, and I believe I expressed that I would not believe Mr. Edwards under oath.

Q. I think you were asked the question whether Mr. Edwards' whole business was in connection with the Electric Improvement Company? A. I believe not; if I did I am mistaken about that.

DR. J. L. ASAY.

Called and sworn, testified as follows:

MR. MCPIKE: Where do you reside? A. In San José.

Q. How long have you lived there? A. Between four and five years.

Q. You are a dentist? A. I am.

Q. Do you know P. L. Barrington? A. I do.

Q. How long have you known him? A. Since about the spring of 1891.

Q. Do you know his general reputation in that community for truth, honesty, and integrity? A. I do.

Q. Is it good or bad? A. It is bad.

Q. Do you know John MacKenzie? A. I am not acquainted with him.

Q. Do you know that there is a man by that name in San José? A. I do.

Q. Do you know his reputation for truth, honesty, and integrity? A. Not sufficiently to testify to it.

MR. RICHARDS: Where did you first know Mr. Barrington? A. In the office with the "Better Times." I was at the time the President of the San José Printing and Publishing Company, which was issuing the "Better Times."

Q. And Mr. Barrington was in the employ of that company? A. Mr. Barrington was city editor.

Q. How long was he city editor of the company of which you were President? A. I can hardly tell now, because the company disrupted some six months after the publication ceased, by the selling of the plant to Mr. J. J. Owen, and Mr. Barrington continued in the employ of Mr. Owen.

Q. You were not connected with the paper when Mr. Barrington was discharged? A. No, I was not connected with the paper. Mr. Barrington kept on with Mr. Owen, as city editor. Mr. Owen started the "Phoenix," and Mr. Barrington then continued with Mr. Owen.

Q. At the time he was discharged by Mr. Owen, were you not in any way connected with the paper? A. I was not; no, sir.

Q. Were you writing for the paper at that time? A. I was doing some work on it, yes.

Q. Some editorial work? A. Yes.

Q. At the time Major Barrington was discharged? A. Yes.

Q. You continued to do editorial work for the paper after Mr. Barrington was discharged? A. I think it is likely. I could not say positively.

Q. You think you did probably, however? A. Yes.

Q. After Major Barrington was discharged quite a newspaper controversy arose between himself and Mr. Owen, did there not? A. I understood so from Mr. Owen.

Q. And that was while you remained with Mr. Owen, and writing editorials? A. Yes.

Q. Major Barrington started a paper and waged warfare with Mr. Owen in various ways? A. He did.

Q. Major Barrington was a Democrat in politics? A. It was hard to tell what he was.

Q. What was the "Phoenix" in politics? A. The "Phoenix," as I understood from the management of it, was opposed to the gang-rule in San José.

Q. That was its politics? A. It opposed corruption in politics.

Q. And it went to pieces on that proposition? A. No, sir; it went to pieces, as I understood it, from a very different proposition; that one of the gang bought it for \$750; so it was stated to me.

Q. You are stating now as to your own knowledge? A. No, I am not.

Q. You are not a member of the gang? A. No, sir.

Q. You belong to the other gang? A. I belong to the Coyote.

MR. BLEDSOE: You have been intimately connected with the public there in San José during your residence there? A. Yes.

Q. How long have you lived there? A. Between four and five years.

Q. You became pretty well acquainted with public men in San José during that time? A. Pretty well, yes.

Q. And you say that you do not know Mr. MacKenzie's reputation for truth, honesty, and integrity sufficiently well to testify what it is? A. Well, I can say this much to you, that I never heard anybody speak a good word as to his truthfulness and integrity, while I have heard others speak of his untruthfulness; but what the general sentiments of the community are I cannot say.

Q. What do people say generally about him in town? A. So far as I have heard, it is very unfavorable.

Q. As to his truthfulness? A. Yes.

MR. RICHARDS: That is, personally? A. Yes.

MR. BLEDSOE: Are you acquainted with Mr. Edwards? A. No; I am not acquainted with him.

Q. Do you know who he is? A. Yes.

Q. Where he is employed and what his business is? A. I presume he is employed by the Electric Improvement Company. I am not acquainted with him at all.

Q. Do you know what his reputation in San José is for truth, honesty, and integrity—his general reputation in the community—do you know what it is? A. I can only say in regard to that, what I said in reference to Mr. MacKenzie.

Q. What is that—that you have heard any one speak favorably of him? A. So far as I have heard, it is unfavorable—that is, it is not above reproach.

Q. Do you mean to say that his general reputation in that community is that he is not to be believed? A. No; I would not say as to his general reputation, because I do not know that, and I am not sufficiently acquainted with his general reputation to testify to that. I only know him so far as I have heard. Now, in regard to Major Barrington, I know positively, because I have been told.

Q. Then, you are not prepared to testify before this committee as to what Mr. Edwards' general reputation for truth is? A. No, sir.

Q. And you say you have resided there about five years? A. Between four and five years.

Q. And have been intimately connected with the public in that city during that time? A. Yes.

Q. And have been an editorial writer on a newspaper during that time? A. Yes.

Q. And have become more or less acquainted with public men in San José during that time? A. Yes.

Q. And I presume have heard other public men discussed by people? A. I have.

Q. Where you have met? A. Yes.

Q. And yet you are not sufficiently acquainted with Mr. Edwards' general reputation for truth to be able to testify to it before this committee? A. No, I would not like to testify to his general reputation.

MR. RICHARDS: I do not understand, Mr. Asay, that you are willing to testify to Mr. MacKenzie's general reputation? A. No, sir; only so far as I have.

Q. You do not put yourself up as a witness? A. I do not in that way—in the way of a general reputation.

Q. The only person whose general reputation you have testified to is Major Barrington? A. Yes; that is, I am positive of, from J. J. Owen has told me, and what others have told me.

Q. The newspaper you spoke of, of which you were the editorial writer, opposed Mr. Edwards and Mr. MacKenzie and Mr. Rea in politics in San José? A. We opposed them in politics. I do not think it opposed them in business.

Q. As a matter of fact, Mr. Asay, don't you know that it did take up the business battle of the San José Light and Power Company, and oppose the Electric Improvement Company? A. Well, that was not done so much as a business proposition as it was that we looked upon the Electric Improvement Company as having swindled the city of San José by putting in a bid, and getting through the City Council an ordinance for the lighting of the city which was a great deal more expensive than what the other company bid for it.

Q. That was your view of it? A. That was the view; and it was in the interest of the people, and not in the interest of any Light and Power Company. I have no stock nor no connection with the Electric Improvement Company or the Light and Power Company.

Q. But your sympathies and your expression editorially were in favor of the Light and Power Company? A. As far as my editorials were concerned, I do not think I ever had one upon the lighting question in any particular. So far as my own editorials were concerned, they were simply devoted to downing the gang that was ruling San José in its politics, and of which—I won't say who was the head of it.

MR. BLEDSOE: Who was the head of it? A. Mr. Rea, I considered the head of it?

Q. There are two factions in San José? A. Yes.

Q. One a Rea faction and another an anti-Rea faction? A. Yes; that is the way it might be called.

Q. And the rivalry and contention between those two factions is very bitter and intense, and has been for years? A. No; there is a rivalry of the citizens, or warfare against the methods pursued by Mr. Rea, Mr. MacKenzie, and Mr. Edwards.

Q. Now the rivalry between that class of citizens and the class represented by Mr. Rea and Edwards is very bitter and intense? A. Yes.

Q. And has been for years? A. It is intense not against them personally, but against their methods of conducting those things.

Q. Hasn't it created a personal feeling, as between citizens who belong to this purifying element and citizens who belong to Mr. Rea and his

gang? A. I do not think so; in my own case Mr. Rea always treated me well.

Q. Are you and Mr. Rea personal friends? A. I believe so.

Q. Are you and Mr. Edwards personal friends? A. I have never spoken to Mr. Edwards in my life.

Q. Are you and Mr. MacKenzie personal friends? A. I have never spoken to him in my life.

Q. And the only personal friendship existing is between you and Mr. Rea? A. Yes.

Q. And you consider his method in politics very dishonorable? A. I consider them corrupt.

Q. Very corrupt? A. Yes.

Q. And yet you consider yourself a personal friend of Mr. Rea's? A. I am a friend this way: when he meets me, as he does to-day, there is no bitterness, no enmity, no antagonism. I haven't anything against Mr. Rea, but I do have for his methods.

Q. Then, the whole feeling as regards yourself is simply political? A. Yes, that is all. We both belong to the same political party.

MR. McPIKE: You are a Republican? A. I am, but I do not vote the Republican ticket, or did not this year, for that very reason, because we asked for respectable primaries, and were denied it.

MR. RICHARDS: Did you vote for Mr. Johnson? A. I did not; he is not in my district.

MR. BLEDSOE: You are not a happy family in politics? A. No; we would be if we had a little discipline in the Republican party.

Q. You are quite happy since the last election? A. Yes, when we downed the gang, if we did elect a Democrat.

DR. GEORGE McCracken.

Called and sworn, and testified as follows:

MR. McPIKE: You reside in San José? A. Yes.

Q. And have lived there for forty-two years? A. Yes.

Q. You are a doctor of medicine? A. Yes.

Q. You are in business there? A. Yes, but I have not been practicing for several years.

Q. What business are you in? A. I am in the real estate business?

Q. Were you ever elected to any office there? A. I have served three or four terms on the Board of Education.

Q. For six or eight years? A. Yes.

Q. Do you know Major P. L. Barrington? A. I do.

Q. How long have you known him? A. About a year and a half or two years.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do.

Q. Is it good or bad? A. Bad.

Q. Do you know Johnnie MacKenzie? A. I do.

Q. How long have you known him? A. Ever since he was a baby twenty odd years ago.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do, sir.

Q. Is it good or bad? A. Bad.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known Mr. Edwards? A. About ten years, I think it is.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do.

Q. Is it good or bad? A. It is bad.

MR. RICHARDS: You say that you know Mr. Edwards' general reputation in the community for truth? A. Yes.

Q. That is his general reputation? A. Yes.

Q. And you say that his general reputation is bad? A. Yes.

Q. Will you tell me who told you so? A. The people of San José.

Q. Just name a few of them? A. Asay, Eaton, and T. Ellard Bean.

Q. Do you mean to tell me that Mr. Eaton told you that Mr. Edwards' reputation was bad? A. Yes. James Clayton and Company.

Q. Who else? A. Mr. Bailey.

Q. What Bailey? A. R. B. Bailey.

Q. Who else? A. Well, lots of them.

Q. Now those you have mentioned, Mr. Asay and Eaton, are Directors of the Light and Power Company? A. I do not know.

Q. You have been in San José for forty-two years? A. I have.

Q. And are in the real estate business? A. Yes.

Q. During the last five years? A. Yes.

Q. And you do not know that Mr. Eaton is a Director of the Light and Power Company? A. I do not.

Q. And has been for the last five years? A. That is, he may have been, I do not know.

Q. Don't you know that T. Ellard Bean is a large stockholder in the San José Light and Power Company, and don't you know that he was? A. No, sir.

Q. Wasn't James A. Clayton a large stockholder? A. I know he has some stock in it, but I do not know how much.

Q. It is from these men that you have learned that Mr. Edwards' reputation is bad? A. Yes; and then my own observation.

Q. Mr. Edwards is in business in San José? A. Yes, I think he is.

Q. He is Manager and Secretary of the Electric Improvement Company in San José? A. Yes.

Q. Which is a large corporation there? A. Yes.

Q. Supplying a large amount of electricity both to the city and the citizens? A. Yes.

Q. And Mr. Edwards is also a man of family in San José? A. I think so.

Q. And the owner of considerable property in the city of San José? A. I think so.

Q. He has lived there for how long? A. I think it has been about ten years since I became acquainted with him, to my recollection.

Q. Have you any stock in the San José Light and Power Company? A. No, sir.

Q. What are you in politics? A. A Democrat in national politics.

Q. A Democrat? A. Yes.

Q. Are you in local politics, also? A. No, sir.

Q. What generally have you been, a Democrat, a Republican, or what? A. Well, for the last few years I have been neither one. We had a Citizens' ticket there which we have been running.

Q. There is a great deal of factional politics in San José in the last few years? A. Yes.

Q. There is a Rea faction down there, so called, and an anti-Rea faction? A. Yes.

Q. You belong to the anti-Rea faction? A. Yes.

Q. Mr. MacKenzie is one of the Rea faction? A. Yes, so reported.

Q. You know Major Barrington, do you? A. Yes.

Q. He is a Democrat, too? A. You cannot prove it by me; I do not think he is anything.

Q. He publishes a paper that he calls the "Democrat?" A. Well, I do not know that he publishes it.

Q. You do not know that? A. No, I do not know it only by reputation.

Q. You know that a paper is published there called the "Democrat?" A. Yes, I have heard that he was the publisher.

Q. During the last campaign in Santa Clara County did you support the Democratic ticket? A. Undoubtedly I did; that is, so far as the national ticket was concerned.

Q. The local ticket—did you not support the Democratic ticket? A. Not entirely.

MR. BLEDSOE: You were a supporter of Mr. Johnson for the Assembly? A. Yes, I did; I think I did.

MR. RICHARDS: Do you not know that Major Barrington supported Mr. Johnson also? A. I do not know anything about that.

MR. BLEDSOE: You say you know Mr. Rea? A. Mr. Rea and myself are good friends outside of politics.

Q. Are you and Mr. Edwards good friends? A. Yes.

Q. Outside of politics, have you heard Edwards' reputation for truthfulness discussed—outside of his politics? A. Well, sir, in San José he didn't have but very little reputation outside of politics.

Q. Outside of politics, have you heard Mr. Edwards' reputation for truth discussed at all? A. I do not think I have, sir.

Q. Then, are you prepared to testify before this committee that Mr. Edwards' reputation in San José for truth, honesty, and integrity is bad, laying politics aside—leaving politics aside, are you prepared to testify that his reputation for truth, honesty, and integrity outside of politics is bad? A. No, I hardly say that.

Q. Then your statement a little while ago, that his reputation in San José for truth was bad, relates entirely to politics? A. Yes, because that is his general character. It is his business. He is a politician.

MR. McPIKE: He is nothing else? A. No, sir.

MR. RICHARDS: Do you mean to say that Mr. Edwards has very little business outside of politics; is that your statement? A. He has very little business that I know of outside of politics.

Q. So that outside of politics you have hardly ever heard his name mentioned? A. No.

Q. Don't you know of him as a business man of San José? A. Well, yes, if you call politics business.

Q. No, sir; I do not. I mean with reference to the management of the corporation known as the Electric Improvement Company of San José? A. That is something I do not know anything about. I understood that he is manager of the company. I haven't had any communication with him.

Q. Have you ever had any business connection with him at all? A. No.

MR. BLEDSOE: You say that you and Mr. Rea are friends? A. Yes.

Q. And you belong to the anti-Rea faction in politics? A. Well, I do not think that that is a fair interpretation.

Q. Are you in favor of Mr. Rea's method in politics? A. No, sir; I have done all I could to oppose it.

Q. Very much opposed to it? A. Yes.

Q. What kind of methods do you consider they are—very bad methods? A. Yes.

Q. Corrupt methods? A. Yes.

Q. And yet, you are his personal friend? A. I meet him on the street every day and speak to him when he is there. Whenever he and I met, we have never had any trouble about politics at all. I knew his methods, and have known him ever since he was a boy; and he don't bother me about my politics, and I don't him.

Q. In San José is a man's private reputation judged by his political reputation? A. When he makes it a business it generally is, to a great extent.

MR. RICHARDS: Does Mr. Rea make that a business? A. I should say so.

Q. Do you know whether he is in any other business? A. No.

Q. Do you not know that he is a Director of two banks? A. No, sir; I do not.

Q. Don't you know he has a large farm out in the country? A. No, sir.

Q. Do you not know that? A. He and Montgomery did own a piece of land down below town.

Q. Do you not know that Mr. Rea has one of the largest and finest stock farms in the county? A. I do not know that.

MR. McPIKE: Do you know Mr. Johnson, the Assemblyman? A. That was elected from Santa Clara County—only by reputation.

D. C. BAILEY.

Called and sworn, testified as follows:

MR. McPIKE: You reside in San José? A. Yes.

Q. And have for twenty-five years? A. Twenty-five or thirty.

Q. You were a Councilman there? A. Yes.

Q. How many times? A. Only once.

Q. Did you ever hold any other office? A. Yes, I was Postmaster there for two terms.

Q. Any other office? A. I was Auditor and Recorder two terms.

Q. County Auditor and Recorder two terms—do you know Johnnie MacKenzie? A. Yes.

Q. How long have you known him? A. Ten or fifteen years.

Q. Do you know his general reputation in that community for truth, honesty, and integrity? A. Well, I know his general reputation, yes.

Q. Was it good or bad? A. Bad.

Q. Do you know it for truth, honesty, and integrity? A. Yes.

Q. Is it good or bad? A. It is bad.

- Q. Do you know Major P. L. Barrington? A. Yes.
Q. How long have you known him? A. I think a little over a year.
Q. Do you know his reputation for truth, honesty, and integrity in the community? A. His reputation is the same, bad.
Q. You say it is bad? A. Yes.

Cross-Examination.

MR. RICHARDS: You have lived in San José how many years? A. I have lived there going on twenty-seven or twenty-eight years.

Q. How many of these twenty-seven or twenty-eight years have you been in office in San José? A. Twelve.

Q. You are a Republican? A. I have been.

Q. And you are? A. I voted the national ticket this time.

Q. Down in San José we have some faction in politics; one is the Rea faction and the other is the anti-Rea faction? A. Not exactly that. If you take the city of San José, of course there are two political parties there, but there is a syndicate that handles the two, and the better element, or at least what consider themselves the better element of both parties, went in against it about a year ago.

Q. And you went in with the better element? A. I do not know as I am any better than some of the faction, but I was in on that side.

Q. How was it when you were running for office, or in office, Mr. Bailey, which faction were you a member of then? A. We made dead straight fights against the enemy then. We went in to win.

Q. Mr. MacKenzie does not belong to your faction, does he? A. No, sir.

Q. Now, when you speak of Mr. MacKenzie's reputation for truth, do you mean to swear that personally his reputation for truth is bad? A. I have never had any dealings personally with Johnnie.

Q. I am not asking about your personal dealings with him, but his personal reputation for truth; not politically. I mean, leaving politics out of the question, you mean to say that the general reputation of Mr. MacKenzie in that community, so far as personal matters are concerned, is bad? A. It is a little shaky.

Q. Do you mean absolutely by that that his reputation is bad? A. Pretty bad.

Q. You say you have known Mr. Barrington for a little over a year? A. I have known him by sight.

Q. No personal dealings with the Major? A. No, sir; I have not.

Q. Do you know Mr. Johnson? A. You mean the Assemblyman? Yes, I know him.

Q. How long have you known him? A. I have known him since a short time before the election.

Q. You supported Mr. Johnson, did you, in the election? A. I gave him a vote.

Q. You are a Republican? A. Yes.

Q. Mr. Johnson is a Democrat? A. Well, Democrats have voted for me.

Q. He is a Democrat—you know that? A. I presume he is.

Q. Do you know whether Major Barrington supported Mr. Johnson in that campaign? A. I do not, I am sure.

Q. You are not holding any office now? A. No, sir.

Q. What was the last office that you held? A. I was Deputy Assessor last summer.

Q. I mean as principal in office. A. It is seven or eight years ago.

Q. What was it? A. The Post Office.

Q. You were an applicant for the position, were you not, when the Republican party returned to power? A. I was an applicant about three or four months before. There was five or six other applicants in before that. I had not intended to be an applicant at all.

Q. But you were an applicant? A. I was at the request of some parties.

Q. Did you not attribute your failure to get that position to Mr. Rea? A. I think Jim had about as much to do with it as most any one. I think if I had had Jim for a friend I would have got it.

Q. At any rate you attributed your defeat to Mr. Rea? A. Yes, I think I did.

MR. BLEDSOE. You have lived in San José for twenty-five years? A. Yes.

Q. You were Postmaster how long? A. Eight years.

Q. Now, during that long residence there and holding the position you did as Postmaster of the city, you became very well acquainted with the people there, did you not? A. I was acquainted with them before I was Postmaster.

Q. I do not mean with Mr. Rea, but with the people of San José? A. Yes.

Q. You have had and now have a very extensive acquaintance with people there? A. I used to have.

Q. Some strangers have come in; you have taken part, have you not, in public matters in the public affairs in the city? A. To a certain extent, yes.

Q. Are you acquainted with Mr. Edwards? A. Yes.

Q. How long have you known him? A. I have known him ten or twelve years. I guess ever since he has been there.

Q. Do you know what his general reputation in San José is for truth, honesty, and integrity? A. Well, I do not know as I would care to answer that question. Harry is a friend of mine, and I do not want to say anything against him.

Q. He is your friend? A. Used to be.

Q. Now answer this question, leaving out all political considerations—I want you to answer what Mr. Edwards' general reputation is in San José for truth, honesty, and integrity—you understand what general reputation is? A. Yes.

Q. What people generally say about a man in the community where he lives, and do you know what it is regarding Mr. Edwards—do you know what his reputation is in the community for truth, honesty, and integrity? A. Well, Harry has been a pretty fair—

Q. I want to know and want a reply to that question—yes or no, because that is a question you can answer that way. Do you know what Edwards' reputation is in San José for truth, honesty, and integrity? If you know it you can say yes, and if you do not know it you can say no. A. I should rather say I did not know it.

Q. Not what you would rather say. You are under oath, and you are a witness, and I have a right to have an answer to the question—yes or no. Do you know what Edwards' reputation is in San José for

truth, honesty, and integrity? A. I do not think I ever heard Harry discussed as much as that.

MR. BLEDSOE: I wish to say to the Chairman that I feel perfectly satisfied that this witness understands the question. He is an intelligent gentleman, and understands perfectly what I am trying to get at, and I think I am entitled to an answer—yes or no. Now, then, do you know the reputation of H. J. Edwards in San José for truth, honesty, and integrity? A. Yes; I cannot deny but that I do.

Q. Then what is it, good or bad? A. I would not want to call it decidedly bad.

Q. You have already stated here that you cannot deny that you know Mr. Edwards' reputation in San José. A. Yes; but if I was—

Q. Hold on until I ask a question, then you can answer. Now, then, do you know whether that reputation is good or bad? You have answered that you do know what his reputation is. Now, the question is, what is the reputation—is it good, or is it bad? A. You say there is no distinction; that is, bad is bad. There is no qualification. A man might be thoroughly and totally bad in many respects, and in others might have good qualities about him, and certainly there would be a difference in the two men.

Q. From your knowledge of what his general reputation is in San José, you believe that a jury, if he were testifying in a case there, would believe his testimony? A. Yes, I think they would, unless it was a packed jury.

Q. There seems to be some misunderstanding as to the meaning of the words bad and good as to reputation, but you have testified that you know what Mr. Edwards' reputation is in San José as to truth, honesty, and integrity; now, what is that reputation, good or bad? A. Well, bad.

Q. Are you friendly with Mr. Edwards? A. We always have been; yes.

Q. Personally? A. Not particularly friendly now, but we always have been.

Q. Is there any intimacy between you now? A. Not particularly.

Q. Is there any cause for animosity between you? A. Well, he might have helped me out perhaps in some things.

A. Do you feel some enmity or bitterness against him on that account? A. No, I do not know as I do.

Q. You were personally friendly, however, at one time? A. Yes.

Q. How long has it been since you ceased to be personal friends? A. Well, I cannot say.

Q. But you are on the same terms with him that you were? A. Not the same footing. I do not know but that we might be, otherwise than political.

Q. Why do you say that his reputation for truth, honesty, and integrity in San José is bad, and at the same time say that you believe that a jury would believe his testimony? A. In a case there are a great many that would not believe him probably when I would believe him.

Q. You testified that you believed if he was a witness before a jury in San José, that jury would believe him under oath, and yet at the same time you would say that his reputation for truth is bad in San José?

A. There might be some circumstances that perhaps a jury would not

take his testimony, but I think otherwise, they would if he was not personally interested.

Q. You qualify, when asked in regard to whether Mr. Edwards would be believed by a jury—you qualified it by saying, if it was not packed—are packed juries common there? A. Well, I do not know as I could say that from my own personal knowledge, but I have heard so much about it that I suppose such a thing is possible.

Q. Is it a fact that this packed jury would believe Mr. Edwards? A. It would depend on which way he was talking.

Q. Then they take it both ways? A. They take it against him.

MR. BLEDSOE: What is your business now? A. I have tended to the real estate business for the last seven years.

Q. Would you believe Mr. Edwards under oath if he were a witness before this committee, and if you were on the committee? A. I would unless he was particularly interested.

Q. If Mr. Rea was interested, how would it be? A. I could not say.

Q. Then, you would believe him if he were not personally interested? A. Yes.

Q. And as to the interest of Mr. Rea, too, cannot say whether you would believe him or not? A. He is a very good friend of Mr. Rea's, I believe.

Q. Do you think he would perjure himself to aid Mr. Rea's political ambition? A. I hardly think he would.

MR. BULLA: You would have some doubt about it? A. I do not know; it would be according to what the testimony was about.

MR. BLEDSOE: From your knowledge of what is said of Mr. Edwards in San José, generally, do you believe that the people would be of the opinion that he would perjure himself in the aid of Mr. Rea? A. No, I do not think he would.

Q. From what you know of what people say of Mr. Edwards in San José, do you think that the people think that Mr. Edwards would perjure himself in favor of Mr. Rea? A. Some of them would and some of them would not.

Q. How about the majority of the people there—that is, the mass of the people—say in estimation of his general reputation? A. I do not know as I understand the question.

Q. Is it generally reputed in San Jose that Mr. Edwards would be ready to perjure himself to aid Mr. Rea? A. I think there would be just about as many on one side as on the other.

Q. And all those people on one side and on the other would be arrayed on those two different propositions on account of the political part; is that about the long and short of it? A. Something like that. Something like that.

Q. You have been there and consequently acquainted there in San José for twenty years with politics? A. No, sir.

Q. For how long? A. For eight or ten.

Q. It is all for Jim Rea or against Jim Rea; that is about the size of it? A. Well, I do not know as it is as bad as painted.

[The committee here adjourned until to-morrow evening at seven o'clock.]

WEDNESDAY, February 15, 1893.

JOHN H. GARNETT.

Called and sworn.

MR. MCPHIE: Your name is John H. Garnett? A. Yes.

Q. You reside in San José? A. Yes.

Q. You have resided there eight years? A. Yes.

Q. What is your business? A. Traveling man for the Armour Packing Company.

Q. Do you know Mr. P. L. Barrington? A. I know Mr. Barrington. I do not know that that is his initials.

Q. Mr. Barrington of San José, who is the witness in this case? A. Yes.

Q. How long have you known him? A. I think about two years.

Q. Do you know his general reputation for truth? A. It is bad.

Q. Do you know it? A. Yes.

Q. Is it good or bad? A. It is bad.

Q. Do you know John MacKenzie? A. I do.

Q. How long have you known him? A. Well, six years.

Q. Do you know his general reputation in that community for truth? A. I do.

Q. Is it good or bad? A. It is bad.

Cross-Examination.

MR. RICHARDS: You say you know Mr. MacKenzie? A. Yes.

Q. And have known him for about six years in that community? A. Yes.

Q. What are your politics? A. Republican.

Q. Have you been a Republican ever since you have been in that community? A. Yes; thirty years.

Q. Are you on friendly terms with Mr. MacKenzie? A. Yes.

Q. You are on friendly terms with him? A. Well, not an intimate friend; I am friendly, and on speaking terms with him.

Q. Simply on speaking terms? A. Yes.

Q. Mr. MacKenzie and yourself, I presume, never had any trouble in politics, or personally? A. No, sir.

Q. Were you a Republican in the last election in Santa Clara County? A. The last fall election? Yes.

Q. In local politics as well as national? A. Yes.

Q. Voted a Republican ticket did you? A. Part of it.

Q. Did you and Mr. MacKenzie work together in the election? A. No, sir; we did not.

Q. You did not belong to the same faction with Mr. MacKenzie, did you? A. I do not belong to the gang, if that is what you mean.

Q. You do not belong to what you term a gang to which Mr. MacKenzie belongs? A. No, sir.

Q. How long is it since you belonged to that gang? A. I don't know that I ever did, sir.

Q. You have been a politician in San José for the last three or four years? A. Well, to a certain extent, as most all citizens are.

Q. You were in the employ of the Republican County Committee three years ago, were you not? A. Yes.

Q. Mr. MacKenzie was a member of that committee, was he not? A. He was.

Q. One of the members of the committee that employed you? A. Yes.

Q. Did you belong to the gang, as you term it, at that time? A. No, sir.

Q. You did not? A. No, sir.

Q. What gang do you belong to? A. No gang, sir, at all.

Q. Politically, you are opposed to Mr. MacKenzie, are you not? A. Not opposed to Mr. MacKenzie; no, sir. I am opposed to his methods.

Q. And you belong to a faction in San José that announce yourselves as opposed to his methods? A. I do not know what you mean by factions; you will have to explain that.

Q. Well, a company of politicians, or reformers, or what you might wish to call yourselves. A. If you call three fourths of the citizens of San José that, why, yes.

Q. So there are three fourths of them belonging to the faction? A. Those opposed to the methods of conducting elections as they are conducted by Mr. MacKenzie's gang, and that portion of it—

Q. Because you do not agree with Mr. MacKenzie, or MacKenzie politics and methods, you came here to testify that his reputation is bad? Is that it? A. No, sir; it is not it.

Q. Have you ever held office in San José? A. I have.

Q. What? A. Deputy Sheriff.

Q. When and how long? A. 1891.

MR. BLEDSOE: How long have you lived in San José? A. About eight years.

Q. Have you been there pretty much of the time? A. Yes.

Q. Well acquainted? A. Quite well acquainted, yes.

Q. Have taken an active part, I presume, in politics in that city? A. Well, not very active; I have taken a part, as I consider most every citizen should.

Q. In doing that I presume you have become very well known with the political so-called leaders in the town? A. Yes.

Q. And with most of the men who take an active interest in politics there? A. Yes, I think I got well acquainted.

Q. How long have you known of this corruption of the MacKenzie gang? A. For the last three or four years.

Q. When did you first begin to learn something about it? A. Perhaps three or four years ago.

Q. Four years ago—that was prior to the time that you were in the employ of the Republican Central Committee? A. Yes.

Q. Why did not you refuse to take that employment if you knew that their methods were corrupt? A. The supposition was then that opinions were going to be changed—that there was to be a change, and a decent state of affairs would be carried on in the Republican party in Santa Clara County.

Q. You imagined things would be changed in the party of which Mr. MacKenzie was a leading member? A. Mr. MacKenzie was not the only member of that committee; there were other members of that committee.

Q. Was Mr. Rea a member of that committee? A. No, sir.

Q. Was Mr. Edwards? A. Mr. Edwards was.

Q. You say that three fourths of the citizens of San José are opposed to the method of that gang? A. Yes, that is my opinion that they are.

Q. How long have they been so opposed; during the last two campaigns? A. Well, the last campaign.

Q. Why is it that three fourths of the people are opposed to these methods and that the method continues in force—do the gang continue in force? A. I do not think the gang has a very large amount of power since last election.

Q. You think it has been swept out? A. To a certain extent. I think the representation to the Legislature here shows that.

Q. You say that Mr. Edwards was a member of the Republican Committee when you were in their employ? A. Yes.

Q. That you were personally acquainted with him there? A. Yes.

Q. I presume that you know a great many other people—you are acquainted with them? A. Undoubtedly, yes.

Q. Were you as well acquainted with his standing in San José as you are of the standing of Mr. Barrington and Mr. MacKenzie? A. I do not think I am.

Q. You do not think you are? A. No, sir.

Q. You have been there eight years? A. Yes.

Q. And are very well acquainted with the citizens of San José? A. Yes.

Q. And have been an active member in political affairs—taking your part in it? A. Yes.

Q. Now, are you prepared to say whether you know the general reputation of Mr. Edwards in San José for truth, honesty, and integrity? A. I am not prepared to answer that.

Q. Then if I ask you the direct question do you know what his general reputation in San José is for truth, honesty, and integrity, what is your answer—by general reputation, meaning what people in general say about him—in those particulars? A. Well, I should rather not answer that question.

Q. Well, I should rather you did answer it. You know what Mr. Edwards' general reputation is in San José for truth, honesty, and integrity? A. I do not know.

MR. RICHARDS: You were a witness against Mr. Rea in the case of Rea against Wood?

ORLO PHELPS.

Called and sworn, testified as follows:

MR. MCPHKE: Your name is Orlo Phelps? A. Yes.

Q. You are an attorney at law? A. Yes.

Q. You reside in San José? A. I do.

Q. Do you hold any office there? A. Councilman.

Q. A member of the City Council of San José? A. Yes.

Q. Do you know Major P. L. Barrington? A. I do.

Q. How long have you known him? A. About two years.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. Yes.

Q. Is it good or bad? A. It is bad.

Q. I will ask you again in conjunction—do you know his general reputation for truth, honesty, and integrity? A. Yes, I have heard it discussed.

Q. Is it good or bad? A. Bad.

Q. Do you know Mr. MacKenzie? A. I know him by reputation and by sight.

Q. How long have you known him by reputation and by sight? A. I cannot give you any definite time—perhaps three to five years.

Q. Do you know his general reputation in that community for truth, honesty and integrity? A. I have heard it discussed.

Q. Do you know his general reputation for truth, honesty, and integrity? A. I have heard it mentioned.

Q. Is it good or bad? A. Well, I consider it bad.

Cross-Examination.

MR. RICHARDS: You are a Democrat? A. Yes.

Q. How long have you lived in San José? A. Six years and a little over.

Q. Mr. MacKenzie is a Republican? A. I believe so.

Q. You know it, do you not? A. I understand so.

Q. Not only a Republican, but an active Republican? A. I think so; yes.

Q. He has acted in both local and general politics and been opposed to your party? A. I cannot tell anything about that; I think so.

Q. You are a member of the City Council? A. Yes.

Q. You were appointed a member of the City Council? A. I was elected by the Council to fill a vacancy.

Q. Well, of the present Council? A. No; of the preceding Council.

Q. The members of the Council by whom you were elected were Democrats? A. No; not all of them.

Q. Some Republicans? A. Yes.

Q. They were Democrats and Republicans who in politics were opposed to Mr. Rea and Mr. Rea's friends? A. To whom do you refer?

Q. To the members of the Council who elected you a member of their body? A. That I do not know.

Q. Don't you know that? A. No; I don't understand it. It was in secret, and how do I know it?

Q. Locally in politics in San José you have been opposed to Mr. Rea, have you not, and to Mr. Rea's friends? A. Mr. Rea is a Republican, and I am a Democrat. I think that is an answer. I am a Democrat, and I naturally would be opposed to him.

Q. Besides being a Democrat, are you not a member of the faction in San José which is largely controlled and composed of the members and friends of the San José Light and Power Company? A. I do not claim to belong to any faction.

Q. You do not claim, but what are you in fact? A. I don't know of such factions.

Q. You know that there has been, and that there is a controversy going on there between two lighting companies for some years? A. Of course, there is a bitter rivalry between them.

H. E. SCHILLING.

Called and sworn, testified as follows:

MR. McPIKE: Your name is H. E. Schilling? A. Yes.

Q. You reside in San José? A. Yes.

Q. How long have you lived there? A. About thirty years.

Q. Do you hold any office, and have you ever held an office there? A. Yes.

Q. What? A. Councilman two years, and present Mayor.

Q. You have just been elected Mayor? A. A year ago, yes.

Q. What is your business? A. Gunsmith.

Q. Do you know Johnnie MacKenzie? A. Yes.

Q. How long have you known him? A. Well, I think about fifteen years or more.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. Yes.

Q. Is it good or bad? A. Bad.

Q. Do you know Major Barrington? A. Yes.

Q. How long have you known him? A. I do not know exactly how long I have known Mr. Barrington; I think may be about two years, or a year and a half.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. Yes.

Q. Is it good or bad? A. Bad.

Cross-Examination.

MR. RICHARDS: You are a Democrat? A. Yes.

Q. You live in what is known as the Fourth Ward in San José? A. Yes.

Q. Mr. MacKenzie is a Republican? A. Yes.

Q. Mr. MacKenzie lives in the Fourth Ward of San José? A. Yes.

Q. Mr. MacKenzie and you have somewhat clashed in your politics in the Fourth Ward in the last few years? A. As far as one being a Republican and the other a Democrat, yes.

Q. Mr. MacKenzie and you have always been opposed there in your politics? A. Politically, yes.

Q. You say you know Major Barrington? A. Yes.

Q. And you are the present Mayor of the city? A. Yes.

Q. Major Barrington conducts a paper in San José? A. Yes, a kind of a one.

Q. It is the "Weekly Democrat," that is the name of it? A. Yes.

Q. Major Barrington has been lampooning the present Council considerably? A. Yes, he makes considerable sport out of it.

Q. And yourself particularly? A. Well, I think that I get a little share of it.

Q. You rather get more of it than the rest, do you not? A. No, I do not think so. It is about evenly divided.

Q. He has been at that for several months? A. Yes, I think so.

Q. And still continues that assault? A. Yes.

Q. During the last election did you know Mr. Johnson? A. I was introduced to him. I met him twice I think since I have been up here, that is all.

Q. Never knew him before election? A. I met him before, just introduced to him, that is all.

Q. Mr. Johnson was the candidate on the Democratic ticket from your district? A. Yes.

Q. Did you take an active interest in that election? A. Yes, consistent with my being a good Democrat.

Q. Do you know whether Major Barrington also took an active interest in that election? A. He claimed to.

Q. Don't you know as a matter of fact that he very ardently and actively supported Mr. Johnson? A. Well, I do not know for a fact.

Q. Do you mean to testify that you do not know that Mr. Barrington and Mr. Johnson were political friends during that campaign? A. Nothing only what was reported to me.

Q. What office did you hold in the Democratic party during that campaign? A. I was, I think, a member of the advisory committee connected with the Democratic County Committee.

Q. And this information came to you as a member of the advisory committee? A. No, sir; I never met with the advisory committee in a political way. This information that I got is from friends that came to me and spoke about Barrington and Johnson in regard to the Willow Glen Club. Nothing in an official way, just general report.

MR. BLEDSOE: You say you have lived in San José for thirty years? A. Yes, about all my life.

Q. How long have you known Mr. MacKenzie? A. I think about fifteen years or more. I may have known him longer, but that is about as long as I now definitely recollect.

Q. I presume you are well acquainted with all the politicians of San José, both Republicans and Democrats? A. Yes, I know them pretty well.

Q. You know the political situation there pretty well? A. Yes, I think I do.

Q. When were you subpoenaed to come here? A. I think Saturday—last Saturday.

Q. Were you informed then or at any other time for what purpose you were subpoenaed? A. No, I do not think I was. I was just simply served with a subpoena.

Q. Did you know that you had been subpoenaed to testify as to the reputation of Mr. Barrington and Mr. MacKenzie? A. No, I did not.

Q. Not at any time until you took the stand? A. No. I had a general idea that I was subpoenaed on this case from what I read in the newspapers.

Q. You knew that you were subpoenaed in the case from the subpoena itself—the subpoena itself informed you that you were subpoenaed on this case? A. I do not believe I ever read it; it was read to me and I put it in my pocket and knew it was a subpoena.

Q. Did you have a general idea as to the facts you would be called upon to testify about? A. No, I did not.

Q. Were you informed by any one that you would be called upon to testify as to the reputation of Mr. MacKenzie? A. No.

Q. Or Mr. Barrington? A. No.

Q. Or Mr. Edwards? A. No, sir.

Q. How long have you known Mr. H. J. Edwards? A. Well, I do not know exactly how long I have known him. I knew him since the

time he was connected with the gas company—I suppose, about five years.

Q. Now you testified as to the reputation of Mr. MacKenzie and Mr. Barrington, and you based your testimony of those two men upon what people generally say about them? A. Yes, from general reputation.

Q. Have you heard the reputation of Mr. Edwards for truth, honesty, and integrity generally discussed in San José? A. In certain regards, yes.

Q. Just answer my question—yes or no? A. Yes, I have heard it discussed.

Q. Then you swear now that you know what his general reputation in San José for truth, honesty, and integrity is? A. Well, that covers a very broad ground.

Q. You understand what is meant by general reputation, do you not—what is said about a man by the people generally in the community where he lives? A. Well, he has the reputation of—

Q. I want to know if you can testify now what his reputation is for truth, honesty, and integrity? A. I know his reputation for truth.

Q. Well, what is it? A. It is bad.

Q. Is that reputation based upon his political action or is it general reputation that he has in town regardless of any political action? A. That is his general reputation in politics.

Q. Well, leaving his politics aside—leaving that entirely out of your mind, now do you still say that his reputation for truth in that community is bad? A. Well, in the manner in which I have stated, yes.

Q. I say laying politics entirely aside, and we will say in ordinary business or social affairs, how would you consider him as you would consider any man that is not in politics? A. Of course, in business matters it is mostly public business that I know his character. In private transactions in business I do not think I ever heard it questioned.

Q. You have never heard his reputation for truth questioned in private and business matters? A. That is, not in private business matters. Business matters of public import I have. You will understand that a good deal of Mr. Edwards' business down there deals with the public—deals with public bodies, and that is generally the way in which I have heard it discussed.

Q. Was his reputation for truth discussed? A. Yes.

Q. There seems to be a distinction, and a marked distinction in San José between a man in political life and in private life? A. Yes; it has become that way.

Q. A good many men in politics in San José will do a great many things that they would not do in social or private life? A. Of course, it is more generally discussed.

Q. Laying aside Mr. Edwards' political connection, and basing your testimony upon what you have heard people generally say about him, would a jury in San José believe Mr. Edwards' testimony in a Court in a matter where no political subject was involved? A. Well, that question is very near in the same line as the previous one. I do not believe that a jury would believe Mr. Edwards under oath in matters in which he is personally interested. I will answer the question that way; that is the only way I could answer it; that is, I base that statement on his reputation as I have heard it discussed.

Q. You do not believe that a jury would believe Mr. Edwards under oath in a matter wherein he was personally interested? A. Yes.

Q. And you base that upon what you have heard people say about him? A. Yes.

MR. RICHARDS: Mr. Schilling, your relations with Mr. MacKenzie are not friendly, are they? A. Well, we have no relations whatever.

Q. You are not his friend? A. I am not his enemy, either. I have nothing in common with Mr. MacKenzie at all.

Q. Did you ever have any business trouble? A. No, sir.

Q. You do not meet Mr. MacKenzie then, as I understand you, on any terms of friendship? A. I meet him and speak to him. I am not a friend of his in the regular sense of the word, and not an enemy.

Q. You have spoken of the reputation of Mr. Edwards, and you have stated also that you were the Mayor of the city of San José? A. Yes.

Q. You were elected Mayor of the city of San José by what is known as the Citizens' party? A. Yes.

Q. And you are one of the leaders of the Citizens' movement; is that a fact? A. No, I do not think so.

Q. At any rate you were their selection for Mayor? A. Yes.

Q. And the Citizens' movement, or party, or faction, whichever you wish to call it, was opposed to Mr. Edwards, and to Mr. Rea, and to the Electric Improvement Company? A. They were opposed to, as I understand it, and I think I do—they were opposed to the methods of Mr. Rea, and Mr. Edwards, and the men who compose the Electric Improvement Company.

Q. And these methods you are opposed to? A. Yes.

Q. Now, let me ask you one question. You were, at the time of your election and before it, a member of the Democratic Committee of San José? A. No, sir.

Q. You were one of the advisers of that committee? A. No, not at that time. When I speak of the County Committee I speak of last fall.

Q. Of the City Committee? A. No, sir; I never had anything to do with the City Committee for two or three years.

Q. Isn't it a fact, Mr. Schilling, that the last Democratic City Committee, as one of their methods in politics, which you favored, and, in fact, a method adopted in your interest, was to call a city primary election so as to get the only election, and call the city primary election next morning at nine o'clock, and one of the methods used in your favor? A. Not that I am aware of.

Q. That is a fact? A. The Democratic City Committee did that.

Q. And did that with your knowledge and with your concurrence? A. No, sir.

Q. In your interests? A. No, sir; not with my concurrence. They did it in my interest. That is something they had charge of themselves.

Q. And something which you have knowledge of also? A. That would be a supposition.

Q. Doesn't that supposition amount to a knowledge on your part? A. I believe those members of the committee were friendly to me.

Q. And they adopted that method to show their friendliness? A. No, sir; that is something you have to inquire of the committee.

Q. During your term of office as Councilman, there was a pretty active controversy before the Council between the two lighting companies? A. Yes.

Q. Then you took a very active and leading part against the Electric Improvement Company, did you not? A. No, not against the company; against the methods pursued by the company and their agents.

Q. And one of those agents was Mr. Edwards? A. Yes.

Q. And it was on account of that persistency and active opposition of those two companies that you were chosen as candidate for Mayor and elected? A. That would be another supposition.

Q. And isn't it a fact that in your election your most active and ardent supporters was a corporation, or the members of a corporation, known as the San José Light and Power Company? A. No, I do not think so. They were among my supporters.

Q. Do you know of a paper in San José called the "San José Record?" A. Yes.

Q. Are you one of the supporters of that paper at present? A. Not any more so than I subscribe for it.

Q. Do you also subscribe for and indorse its attitude towards Mr. Rea and his friends? A. What do you mean by subscribing?

Q. Is it not a fact that you contribute in a business way and in a personal way to the support of the paper? A. No; no more than I just stated.

Q. Is it not a fact that you indorse its attitude towards Mr. Rea and his friends? A. I indorse its attitude whenever I think it is right.

Q. You think it is right now? A. Quite often; I would not say always.

Q. Is it not a fact that that organ is indorsed by your faction in San José? A. I do not know as we have a faction.

Q. Is it not a fact that that organ is indorsed by the faction or element to which you belong? A. In answer to that question I will state that that paper I believe is considered by a great many of my friends in the same manner as the San José "Daily Herald." It is a Democratic paper.

Q. These friends which you speak of as your friends are also a great many of them the officers and stockholders of the San José Light and Power Company? A. Of course I have no knowledge of who are the stockholders of the Light and Power Company right through, but I think they are a very small majority of my friends.

Q. They are among your friends? A. Yes; taken in connection with the whole number.

Q. And all of them, whether in the majority or not, are the supporters of the paper to which I have referred? A. That is something I could not state. I believe some of them are.

Q. Among those are W. W. Gillespie? A. Yes.

Q. And Adam Reihl? A. Yes.

Q. And Uriah Wood? A. I have no knowledge whether Mr. Wood is a friend of mine or not.

Q. Do you know whether he is a supporter of the paper? A. No, sir; I do not.

MR. BLEDSOE: Is it not a fact that in San José, that people in politics are divided into factions? A. Yes; they are divided.

Q. And everybody who pretends to take any important part in politics belong to one of those various factions? A. Yes.

Q. And that is the way in which they are split by either local differences or about local men? A. Well, yes; I believe they are split up in factions.

Q. And everybody who claims any prominence in politics belongs to one of those factions; is that so, that they necessarily belong to one of those factions? A. I suppose he would act with one of those factions.

Q. If he acts with one of them he belongs to it, does he not? A. Well, of course, in regard to those factions in San José, it is rather a long story to explain.

MR. MCPHIE: You were asked, Mr. Mayor, as to whether or not on account of Mr. MacKenzie and you residing in the same ward, you had clashed in politics. I will ask you whether or not there are a great many men who live in that ward who also clash with you in politics, and whose reputation is good? A. Yes.

W. W. GILLESPIE.

Called and sworn, testified as follows:

MR. MCPHIE: You reside in San José? A. I do.

Q. And have for eleven years? A. Yes.

Q. Do you know Major Barrington? A. I do.

Q. How long have you known him? A. I do not remember exactly how long it is. I think about as long as he has been in the city; two years, I think.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do.

Q. Is it good or bad? A. Bad.

Cross-Examination.

MR. RICHARDS: Have you ever held office in San José? A. I have not.

Q. Have you ever been an aspirant for office in San José? A. I have not.

Q. What are your politics? A. I am a Republican.

Q. Have you ever taken an active part in politics in San José. A. Sometimes.

Q. What do you know about Major Barrington? A. He is a man I would not believe under oath under any circumstances.

Q. He runs a paper down there, does he not? A. I believe he runs a paper of some kind there.

Q. He abuses you from time to time? A. I do not know; I have heard so. I seldom read his paper.

Q. You know as a matter of fact that he does indulge in sarcasm and raillery at your expense occasionally? A. Well, I saw one article, I think. I very seldom see the paper. I do not think I have seen his paper not over two or three times since he published it.

Q. You are Secretary of the San José Light and Power Company. A. I am.

Q. Have you been so ever since Mr. Edwards' discharge from that company—what is your occupation? A. I am Secretary of the San José Light and Power Company.

Q. Been in that position for the last three or four years? A. I think, ever since the company was organized.

MR. BLEDSOE: When were you subpoenaed? A. I think it was last Saturday afternoon.

Q. Were you informed by anybody prior to your coming here as to what facts you would be called upon to testify to? A. I was not.

Q. Did you understand that you were coming up here to testify as to the reputation of Mr. Barrington? A. I did not.

Q. Then you did not know what you would be expected to testify to until you got on the stand? A. I did not.

Q. How did it come that you were selected; do you know? How did it come that you were selected as one of the witnesses in this case. A. I do not know.

Q. Is it generally known in San José that you are Secretary of the San José Light and Power Company? A. I think so.

Q. You are a Republican in politics? A. Yes.

Q. It is true, is it not, that in San José that there is the Rea faction and the anti-Rea faction in Republican politics? A. I do not know as it could be considered that way. There are some people there who do not approve of Mr. Rea's methods in politics, and probably vote as they desire.

Q. And those who do not approve of Mr. Rea's methods in politics and those who are not his friends, are they arrayed against him? A. I could not swear as to that. There was a club organized down there prior to the last election composed of the best element of the Republican party in Santa Clara County.

Q. You do know, do you not, that your employers are very much opposed to Mr. Rea, and others connected with the San José Electric Improvement Company? A. I cannot answer as to that. Some of them are friendly to Mr. Rea. Mr. Rea has interests in our company.

Q. Has interests in your company yet? A. Yes; to the extent of probably twelve thousand dollars.

Q. You are well acquainted in San José, are you not? A. Pretty well acquainted.

Q. And have taken some action yourself in politics there? A. Well, no particular action. I do take a hand sometimes.

Q. Your testimony with regard to the reputation of Mr. Barrington is based, is it not, upon what you have heard people generally say about him in San José? A. Yes; and of my own personal knowledge.

Q. You know what general reputation means—not your personal knowledge, but what you have heard other people say about a man? A. Yes; I understand it that way.

Q. Do you know Mr. Edwards? A. I do.

Q. Can you swear now, before this committee, that you know what his general reputation is in San José for truth, honesty, and integrity? A. Yes.

Q. You know what it is? A. Yes.

Q. What is it? A. Bad.

Q. Is that testimony based on your personal knowledge? A. Well, of my personal knowledge, and also of the general talk that I have heard about the streets, prior to any time that he had any connection with our company.

Q. If you had no personal knowledge of him at all, would you still be able to testify that you know what his general reputation is? A. As I have heard it on the street, yes.

MR. RICHARDS: Now, Mr. Gillespie, you say you are Secretary of the Light and Power Company? A. Yes.

Q. You are also Manager of the electric lighting department of that company? A. I am Superintendent of that department.

Q. Mr. Edwards is the Secretary of the Electric Improvement Company of San José, and is also the Manager of the Electric Lighting Company? A. I suppose so, from report.

Q. Those two companies are and have been, for the last three years, engaged in an active business rivalry, for not only the public but the private lighting of San José? A. I believe there has been some opposition there, yes.

Q. And by this rivalry there has been created personal animosity between the members and the officers of the respective companies? A. I do not know.

Q. You know that such animosities exist? A. I think so.

Q. Prior to the organization of the Electric Improvement Company of San José Mr. Edwards was the Superintendent of the San José Gas Company? A. Yes.

Q. And you were one of the officers—the Superintendent of some similar office in that company known as the San José Brush Company? A. Yes.

Q. When those two companies were in existence, between Mr. Edwards as the Manager of the Gas Company and yourself and your company there was a rivalry for the lighting of the city? A. There was between the Gas and the Electricity at that time.

Q. You were in one company as its Secretary or Superintendent and Mr. Edwards in the other? A. Yes.

Q. When these two companies were consolidated into the San José Light and Power Company and thereby controlled all of the lighting of the city and prior to the organization of the Electric Improvement Company, Mr. Edwards shortly after that consolidation was discharged from your company? A. Yes.

Q. And you were placed in his place? A. I was not.

Q. You were given a part of his duties? A. I was not.

Q. Mr. Edwards was the Superintendent of the gas portion of the company? A. Yes.

Q. And you? A. Of the electric department.

Q. And you became Secretary of the combined corporation? A. Prior to Mr. Edwards' discharge and at the time the company was organized I was elected Secretary of the company.

Q. Ever since that time, and particularly about the time of the discharge of Mr. Edwards, an animosity arose between Mr. Edwards and yourself, is that so? A. No, sir.

Q. Is it not a fact, Mr. Gillespie, that on one occasion, shortly after Mr. Edwards was discharged, in the office of the San José Light and Power Company, you drew a pistol on him? A. I desire to make an explanation about that.

Q. State if you did, is that a fact? A. After he was discharged, he demanded to go in the safe of the company, and I would not permit him to go in it.

Q. And you drew a weapon upon him, and compelled him to leave the office? A. I told him if he attempted to go in the safe, I would put a hole through him.

Q. And did you not tell him, he would not look well going down the street with a hole through him? A. I do not remember telling him that.

Q. At any rate that was your feeling towards Mr. Edwards, was it not, and your feeling was hostile to him after his discharge? A. I do not know why it should.

Q. Well, was it not? A. No.

Q. Are you and Mr. Edwards friendly now? A. We talk to each other occasionally. I have no desire to associate with a man like Mr. Edwards, I do not like to talk with him unless compelled to.

Q. You have nothing to do with him? A. No, sir; and I have no desire to, nor none of his kind.

Q. This attitude of yours toward Mr. Edwards has continued since that time? A. Well, I presume I have about the same opinion I always had.

Q. He has been identified with the Electric Improvement Company since its organization, and the fact, after his discharge, he was made the manager of that company, and since has been your active opponent would make no difference? A. That would make no difference.

Q. No difference? A. Not a particle.

Q. Is it not a fact that since that time, not only in business, but in politics in the city of San José, you are known as an active opponent to Mr. Edwards? A. I have not.

Q. Have you ever supported since that time the party which Mr. Edwards is supporting in local politics? A. Probably not the entire party, but I have supported men possibly he supported. I use my own judgment in that respect.

Q. As a fact, if he supported any men in politics was at least one reason why you should not support them. Hasn't that been your position? A. I cannot swear as to that.

Q. Is it not a fact that you and your company subsidized a newspaper in the city of San José for the most of the year which constantly attacked the Electric Improvement Company, and Mr. Rea and Mr. Edwards? A. I do not know about the particular attack on the Electric Improvement Company. The San José "Mercury," of which Mr. C. M. Shortridge and Mr. Rea are associated in, was attacking the Light and Power Company right along, and charged the Directors of the company with having meters that were not regulating properly.

Q. And you paid a paper a hundred dollars a month to take up your end of the fight? A. There was no specified amount named. It might have amounted to various sums.

Q. Is it not a fact also that your company of which you are a member, entered city politics and was in the election a year or two ago and you paid out of your corporate treasury in the neighborhood of eight hundred and some odd dollars, and put it on your book for the expense of the spring election, and it was used in opposing Mr. Rea, Mr. Edwards, and his friends? A. I will state the company never entered politics at all. There was some money that was spent for to defeat—that was the object of it, to defeat certain members of the Council that were personal enemies of the company. It was their effort to defeat the company on every turn. That so far as it related to this city contract, it was given to the Electric Improvement Company for the sum of twelve thousand dollars more than the Light and Power Company

offered the same services for. Mr. Edwards, Mr. Richards, and Mr. Shortridge, Mr. Dougherty, Mr. Tisdall, were behind this company, and for their services rendered for the company received the sum of twenty-five thousand dollars.

MR. RICHARDS: You know that as a fact? A. I do; I heard Mr. Rea so testify.

Q. Just answer the question. A. Divide the question and I will answer it.

Q. Is it not a fact, or is it that your company did spend the sum of two hundred and thirty dollars for the expense of the spring election, I think it was the year 1890? [Objected to.] A. There was some money, I cannot remember the exact amount.

Q. You know it to be a fact that they did expend money that way? A. Well, the books show it—such entries show on the books.

Q. Do you or do you not know it to be a fact? A. So far as the books are concerned, yes. It was so entered. I couldn't testify as to the purpose for which it was used.

MR. BULLA: Did you disburse any of the money? A. I did not.

Q. You do not know it to be a fact that the money was used that way? A. I could not say. The bookkeeper made the entry. I could not swear that any of the money was used that way.

MR. RICHARDS: The bookkeeper is under you? A. Yes, to a certain extent. I do not examine his books right along to see how his entries are made. I think there was some such an explanation made.

MR. BLEDSOE: Do corporations in San José generally keep a political account? A. We do not.

MR. RICHARDS: Is it not a fact that Mr. Rea brought suit against your company and made you pay back that money? A. We never did keep a political account.

MR. BLEDSOE: At the time you drew a pistol on Mr. Edwards in your office, did he claim to have the right to go into the safe, did he claim that as a right? A. Not particularly, no. If you will permit me to explain I will tell you how he came to come there. After these companies were consolidated, and prior to the time they were consolidated, there were two safes belonging to the Brush Electric Light Company and one belonging to the San José Light Company. After the consolidation took place, the gas company made some efforts to wind up and there were some very large books which they had there, called the gas registers, and which they desired to use, and used the safe to keep their books in there until they could get their accounts straightened up, and after the books had been turned over to the Light and Power Company, they had no safe to keep those books in, and the President of the Light and Power Company asked of some of the Directors of the San José Gas Company (that company at that time had not been dissolved); and he asked them and told them he would like to have the large safe that the Gas Company had, and take it to the office of the Light and Power Company, to use it to put these books in. An order was made by the President of the San José Gas Company and two of the Directors of the company (there are five Directors, the majority of them signed the order), instructing the bookkeeper or Secretary there to deliver the safe to the San José Light and Power Company. The safe was brought over to the office of the Light and Power Company (that is the company of which I was Secretary), and it was brought over about five o'clock in the

evening. Prior to this time, Mr. Edwards had been notified by the President of the Light and Power Company, after he had been discharged from the company, that if he had any papers or accounts of any kind he desired to take out of the safe, to take them out. The safe was brought over to the office of the Light and Power Company, and placed in my charge. As it happened, the day it was brought over there Mr. Edwards was in San Francisco, I believe; and when he returned, he found that the safe had been taken away. Along in the morning, about seven o'clock, he came over, and demanded some papers that he had in the safe. I told him to go to the office of his company, and if they were willing that he should take any papers from the safe, I would give them to him. He said he was going to take them anyhow. At the time he came, there was a locksmith there changing the combination of the safe. The locksmith was in the office, and Mr. Edwards undertook to bulldoze me, and he was going in to take those papers out of that safe anyhow.

MR. BLEDSOE: His own papers? A. I do not know whether his papers. He claimed he had papers there. I told him I would not permit him to take anything out of the safe without an order from the Directors of the San José Gas Company. He said he would take them anyhow. I told him if he undertook to tamper with the safe I would put a hole through him. So he made an attempt to come in, and I took my revolver out of my desk, out of my drawer, and told him if he attempted to bother the safe or tamper with it I would put a hole through him.

MR. RICHARDS: It was the safe that prior to that time he kept his papers in? A. I presume so. It was a safe coming from the San José Gas Company.

Q. A safe he had charge of? A. Yes, prior to his discharge.

Q. You say he had been notified to come and get his papers? A. Yes.

Q. He was a stockholder in the company? A. Yes.

Q. At the time he came in this way? A. Yes.

MR. BULLA: You say he had been notified to come and get his papers out of the safe? A. He was so informed by the President of the company eight or nine days before.

Q. You had notified him to come and get his papers? A. The President notified him that after his discharge that if he had anything about the property to take it.

Q. Did you know at the time that he had been notified to come and get his papers? A. I did; the President so reported to me.

MR. McPIKE: That was before the safe was moved? A. That was eight or nine days before the safe was moved. He was also notified by letter; I wrote a letter myself and copied it in my copy book.

MR. RICHARDS: You notified him yourself to come and get his papers? A. I notified him if he had any property or any values of any kind on the property of the San José Gas Company that he should remove it.

MR. BULLA: Was there anything that would indicate what portion of the papers, if any, in that safe was his? A. I do not know.

Q. If you notified him to come and get his papers, why did you refuse to let him get them when he wanted them? A. Well, eight or nine days prior to this time, I didn't know what he had in there, but he had an opportunity to get it out if he desired. I know he claimed he had papers there, and there was some of the papers of the San José Gas Company. There was a note against Charles M. Shortridge for a thousand

dollars. Mr. Shortridge of the San José "Mercury." Prior about eight or nine days, just prior to that time, the safe was put in my charge.

Q. And he was instructed to get his papers? A. After he was discharged, he was notified to take everything out.

Q. Did you understand that that invitation extended to the time subsequently to the time when that safe came into your charge? A. Yes, eight or nine days after.

Q. You say you notified him to take his property out of the safe if he had any there? A. Yes.

Q. You did that under orders? A. Yes.

Q. Did you understand that notification extended to the time subsequent to the time when the safe came under your charge? A. I did, yes.

MR. BULLA: Did you know when he came there that he had authority to take his papers from the safe? A. I did not. I was instructed by the Directors of the Gas Company not to let him take anything from the safe. He had received instructions prior to this time to take out his papers, if he had any, and when the safe came into my possession they told me not to let him take anything from the safe.

Q. That is the question I asked, whether the notice you refer to was prior to or after the safe came into your charge? A. I say I understood that after the safe came into my possession I was instructed by the Directors of the Gas Company not to permit him to take anything from the safe without orders, and I so instructed him if he got an order from them, all right. He went up town to one of the Directors, and he said, "Come down, and if there is any property which belongs to you come down and we will get it;" but Mr. Edwards did not come.

MR. RICHARDS: Do you know, after you say you notified him, whether he ever had come, up to that time, to get his papers from the safe? A. I do not know; the safe was not in my possession.

Q. You do not know whether he came or not? A. No, sir.

Q. I understood at the time the safe was removed from your place he was away? A. He was one day in San Francisco.

Q. And it was on that day the safe was moved? A. I think so.

Q. And then next morning after his return he came down to get his papers out? A. Yes; I told him the Directors had instructed me not to permit him to go in the safe without instruction from them and if he got an order and instructions from them he could take any property that belonged to him that was there.

Q. I understood you at that time that he had been notified by the Directors? A. I do not know anything about the Directors.

Q. At any rate he had a notification from you to get his papers? A. Nine days prior to that time he was told to get all his property off the property of the Light and Power Company.

Q. So far he hadn't done it? A. I do not know.

Q. At any rate you drew a weapon on him? A. Yes, when he attempted to go in the safe anyhow.

MR. McPIKE: Are you a Director of the Light and Power Company? A. I am not.

Q. Had you any voice at all in the conduct of any of its business when it was acting in a corporate capacity? A. No; I acted under the instructions of the Board.

Q. It is a corporation? A. Yes.

Q. And governed by a Board of Directors? A. Yes.

Q. You are not a member? A. I am not a member.

Q. Would the fact that the corporation to which you belong had entered into a hot political fight with another corporation affect you as to the reputation of any citizen there who belonged to another company? A. No, sir; it would not under any circumstances.

Q. And all you testify to as to Mr. Edwards is from what you have heard upon the streets and what people say that knew him? A. Yes.

Q. And it is not prompted by any feeling of ill-will or malice on your part? A. None whatever.

MRS. H. H. JOHNSON.

Called and sworn, testified as follows:

MR. McPIKE: You are the wife of Assemblyman Johnson? A. Yes.

Q. Of Santa Clara County? A. Yes.

Q. Reside in San José? A. Yes.

Q. On what street? A. On Willis Avenue.

Q. Your husband is engaged in what business? A. He was in the lumber yard when he was elected to the Assembly.

Q. For Mr. Meserve? A. Yes.

Q. How long had he been engaged? A. Five years this next month.

Q. Have you any children? A. Yes.

Q. How many? A. Four.

Q. What are their ages? A. The oldest is ten, the next six, four, and two.

Q. Are they all boys? A. Two boys and two girls.

Q. Do you know a gentleman by the name of Brownlie? A. Yes.

Q. When did you first see him? A. Well, about the 5th or 6th of December.

Q. Where was he? A. At my house.

Q. In San José? A. Yes.

Q. What time did he call there first? A. About five o'clock.

Q. Morning or evening? A. Evening.

Q. Did he call again? A. Yes; about seven, and again at nine, and at eight in the morning.

Q. Came back at eight in the morning? A. Yes.

Q. Did he see your husband; was he at home at any of those visits? A. At eight o'clock in the morning he was.

Q. Were you present at any conversation which took place between Mr. Brownlie and your husband? A. Just before he left, I went to the room where they were. I overheard them talking about Senatorship. I understood that was what he came there to see him about.

Q. What candidate were they talking about? A. Mr. White.

Q. For Senator? A. Yes; Mr. White.

Q. Did you see Mr. Brownlie hand anything to your husband? A. Yes.

Q. What was it? A. Well, it was a card.

Q. A double card or a single card? A. A double card.

Q. Do you think you would know it if you would see it again? A. I think so.

Q. I will ask you to look at this [handing card to witness] and see whether it was that, or one similar to that? A. That looks like the card, or such a card as that.

Q. Did you see any marks—notice any marks on the card? A. I didn't pay any attention; there might have been marks on it.

MR. RICHARDS: I understood you to say you did not see any marks? A. No, sir; I didn't notice any. There might have been marks, but I did not notice any.

Q. After Mr. Brownlie left your house, did you see that card again? A. Yes, my husband brought it out in the room and showed it to me.

Q. Did you read it? A. I looked it over; yes, it was the first I had seen of the kind.

Q. Have you ever been a witness before, anywhere? A. No, sir; this is the first time.

MR. RICHARDS: No questions.

MR. BLEDSOE: You say about the 5th or 6th of December Mr. Brownlie called? A. Yes, I think so.

Q. How do you fix the date? A. Well, I do not know exactly, it was quite awhile before Christmas.

Q. It was quite awhile before Christmas? A. Yes.

Q. Might it not have been as near the 15th as the 5th of the month? A. It was not that late.

Q. You are satisfied, are you, that it was about the 5th or 6th? A. Yes.

Q. Is there any circumstance, anything that occurred about that time which is connected with the date of his visit? A. No.

Q. The best of your recollection is that it was about the 5th or 6th of December? A. Well, my husband went to San Francisco that afternoon, that is one thing that happened.

Q. You say that he called at your house at five o'clock, at seven o'clock, and again at nine o'clock? A. Yes.

Q. Was your husband in at any one of those times? A. No, sir; he was not at home; that is the reason he called.

Q. He inquired for him—he did not get home until when? A. That night about eleven o'clock.

Q. He called again at eight o'clock on the following morning? A. Yes.

Q. That was the time when he saw him? A. Yes.

Q. And had a conversation with him? A. Yes, he told me to inform him, and not let him go off, that he wanted to see him.

Q. You saw him, you say, hand your husband a card like that, and how long after he went away did your husband come and show you the card? A. Right away; I was in the room and he came in.

Q. You say you saw no marks on the card? A. No, sir.

Q. You looked the card over, did you, when your husband showed it to you? A. Yes.

Q. That was the first of the kind that you had seen? A. Yes.

Q. If there had been any marks would you have noticed them? A. I do not think so, because I did not take really much interest in it. It might have been marked.

Q. Did your husband call your attention to any marks on the card? A. No, sir.

MR. RICHARDS: You looked over the card just now, did you? A. Yes.

Q. Did you notice on the inside of the card some marks? A. On this card?

Q. Yes. A. No, sir.

J. J. NASH.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside? A. Sacramento.

Q. Did you ever live in San José? A. Yes.

Q. How long ago? A. About seven months ago I left San José.

Q. How long did you live there? A. Thirteen years.

Q. Pretty well acquainted? A. Yes.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known Mr. Edwards? A. I knew him for about ten years.

Q. Did you ever hear his reputation down there among citizens discussed? A. Yes, I have.

Q. From the speech of people can you say that you know what his general reputation is for truth, honesty, and integrity in that community? A. Well, not very good.

Q. Do you know what his reputation is—do you know what his reputation is in the community for truth, honesty, and integrity? A. Yes, I do.

Q. What is it, good or bad? A. Bad.

Q. Do you know Johnnie MacKenzie? A. Yes.

Q. How long have you known Johnnie MacKenzie? A. I have known him for about ten years.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. No, sir; I do not.

Cross-Examination.

MR. RICHARDS: You say you lived at San José for about ten years?

A. About thirteen years I have lived in San José.

Q. What is your occupation? A. Truckman.

Q. During all that time? A. About eleven years I was in the truck business.

Q. What were you the other two? A. I was in the saloon business.

Q. Kept a saloon for two years? Was it the last two years? A. No, sir; the first two years.

Q. You say you know Mr. Edwards? A. Yes.

Q. Personally? A. No, sir; not personally.

Q. Ever met him? A. Yes, I have met him.

Q. Where did you meet him first? A. I couldn't say where I met him first; I will state about six years ago when I first met him; that is, to have any conversation with him at all.

Q. Never had any business relations with Mr. Edwards? A. Yes; I did some work for him.

Q. What kind? A. Hauling, trucking.

Q. Did some hauling for him? A. Yes.

Q. Did you ever have any trouble over your trucking? A. No, I never had any trouble.

Q. Never had any trouble with Edwards about your work? A. I never had any trouble, no, sir.

Q. Was your relations with Mr. Edwards alone? A. Yes; myself alone.

Q. You mean your relations were friendly, so far as business trans-

actions with him? A. Yes. When he came after me I didn't collect my money from him, I went to the office and got my money for the work, and had no dealings with him particularly.

Q. Did you ever have any trouble with the company that he represents? A. No, sir.

Q. Any trouble in collecting your money? A. No, sir.

Q. Do I understand you are friendly with Mr. Edwards? A. Well, I say yes; friendly so far as I know him. I do not know him personally. I do not speak to him when I see him. I do not know him well enough to speak to him.

Q. You mean you know him by sight? A. Yes.

MR. RICHARDS: For whom did you truck the last two years? A. I have done no trucking the last two years.

Q. What have you been doing the last two years? A. The last two years I haven't done much of anything.

Q. The last two years, I understand, you have not been in business? A. Seven months ago I was running an express wagon there.

Q. For the last two years what business have you been engaged in, besides running a wagon? A. I was in Mountain View, running a cider wagon.

Q. Two years? A. A year and a half, and went back to San José.

Q. What kind of business? A. Soda fountain and soda water.

Q. Kept a soda water saloon? A. Soda fountain and factory.

Q. When you were in San José, did you associate with the men Mr. Edwards associated with? A. No, sir; not particularly.

Q. You are not a member of any of the clubs or social organizations of which he is a member? A. No, sir.

Q. You know in San José who its citizens are with whom Mr. Edwards does associate? A. Yes; I know a few of them.

Q. Who are they? A. Well, Mr. Rea and Mr. MacKenzie.

Q. Mention some others if you know them? A. Mr. Holman.

Q. Mr. Holman is also a truckman? A. Yes.

Q. A rival truckman of yours? A. No, sir; he was trucking there when I was.

Q. He did the most of the trucking for Mr. Edwards and his company? A. I think so; yes.

Q. Have you, during the time that you lived in San José, associated with the people Mr. Edwards has associated with? A. No, sir; no more than one man, Mr. Holman.

Q. I understand you to say that outside of Mr. Rea, and Mr. MacKenzie, and Mr. Holman, you do not know who the associates of Mr. Edwards are? A. No, sir; I could not say.

Q. You do not know? A. No.

Q. You, yourself, have not been in the same social circle with Mr. Edwards? A. No, sir.

Q. Nor with Mr. Edwards' associates? A. No more than I have stated.

Q. Only with Mr. Holman? A. Yes.

MR. BLEDSOE: Where were you subpoenaed? A. Sacramento.

Q. How long has it been since you lived in San José? A. Just about seven months.

Q. When were you subpoenaed? A. I was subpoenaed on last Tuesday a week ago.

Q. Who was it that subpoenaed you? A. I think it was Mr. Healy.

Q. You knew this investigation was being held before you were subpoenaed? A. No, sir; I did not.

Q. Did you know anything about it? A. I did not.

Q. Had not seen any one connected with the investigation? A. No, sir.

Q. Now, do you know how you came to be subpoenaed? A. I do not know anything about it.

Q. Were you acquainted with Mr. Johnson in San José? A. I knew him by sight; I never was personally acquainted with him at all—knew him and knew his name.

Q. Were you ever employed by Mr. Riehl in San José? A. No, sir.

Q. Of the San José Light and Power Company? A. No.

Q. You do not know how you came to be selected as one of the witnesses on reputation in this case? A. No, sir.

Q. Was it known to your friends in San José when you moved away from there that you were coming to Sacramento to live? A. Yes.

Q. That was seven months ago? A. Yes.

Q. What is your politics? A. Democratic.

Q. Are you acquainted with the political factions that existed in San José when you lived there? A. Well, no, not particularly.

Q. Did you take any interest in politics? A. No, sir; I never meddled in politics but very little.

Q. Never took any interest in them at all? A. No, sir.

Q. How did you happen to hear Mr. Edwards' reputation discussed in San José for truth if you did not associate with Mr. Edwards' associates? A. I have been around a good deal, and a great many times I have heard it discussed in different crowds and different parties.

Q. Did you hear his reputation in political matters discussed? A. Yes.

Q. Aside from politics, and aside from political matters, did you ever hear his reputation for truth discussed in San José in business and social affairs? A. Yes, I have.

Q. Then your testimony for truth, honesty, and integrity, as to his reputation being bad, is not based on anything that you have heard about his political career? A. Well, his political career, and also his general business affairs, I have heard spoken of; and he would not do to trust—something to that effect.

Q. He would not do to trust? A. Yes.

Q. Did you ever hear any one say that they would not believe his word? A. Yes, I have heard them say they would not believe him under oath; I have heard that remark made by several different parties.

Q. Residents of San José? A. Yes.

Q. That they would not believe Mr. Edwards under oath? A. Yes.

MR. RICHARDS: Name some of those parties? A. I do not know that I could name any of the parties.

Q. Were they parties of any standing or reputation in San José? A. Yes; I think they were. I heard one, but he is dead. I have heard a great many make the remark a great number of times.

Q. Who is he? A. A man by the name of Zeigler.

Q. He was a saloon keeper? A. Yes.

Q. And he, a great number of times, has said that he would not believe Mr. Edwards under oath? A. Yes.

Q. Was Mr. Zeigler's statement to you the basis of your judgment that his reputation was bad? A. No, sir; I have heard others.

Q. Can you name any others? A. I have heard a great many others make the remark. I do not know that I could name them now.

Q. They were saloon keepers? A. No, sir.

Q. Name any other person in San José besides Zeigler, the saloon keeper? A. I do not know that I could name any other parties.

Q. Could not name any other man? A. Yes; I could name one man—Mr. Riordan.

Q. What's his business? A. Cooper.

Q. Mr. Riordan has stated that he would not believe Mr. Edwards under oath? A. Yes; I have heard him make that remark.

Q. And he has stated that a number of times? A. Yes.

Q. Is he a saloon keeper, also? A. No, sir.

Q. What business are you now engaged in? A. I am in the transfer business here in Sacramento.

Q. Transfer? A. Yes.

NICASIO CASTENADO.

Called and sworn, testified as follows:

MR. MCPHIE: Where do you reside? A. San José.

Q. How long have you lived there? A. Forty-two years.

Q. What is your business? A. Teamster.

Q. Who do you work for? A. C. Meserve.

Q. You work for Mr. Meserve? A. Yes.

Q. How long have you been working for Mr. Meserve? A. About fifteen years.

Q. Have you worked steadily for him the last six months? A. Yes.

Q. Do you know Mr. Prindle, and where Mr. Prindle's blacksmith shop is? A. Yes.

Q. Does it join the lumber yard of Mr. Meserve? A. Yes.

Q. Do you know a young man there by the name of Harry Conner? A. Yes.

Q. Do you know Assemblyman Johnson? A. Yes.

Q. Did Mr. Johnson work for Mr. Meserve while you were there during the last six months? A. Yes.

Q. Did Harry Conner ever come to you and ask you anything about Mr. Johnson? A. Yes.

Q. How many times did Mr. Conner come to you and ask you about Mr. Johnson? A. Twice.

Q. Was that since the last election? A. I do not remember exactly whether it was after or before it.

Q. What did you tell him about Mr. Johnson? A. That he was not there.

Q. What did Mr. Conner say to you? A. Where Mr. Johnson was.

Q. He asked you where Mr. Johnson was? A. Yes.

Q. Twice? A. Yes.

Q. You told him each time he was not there? A. I told him I did not know.

Q. Did you tell Mr. Johnson afterwards that Mr. Conner had been there to see him? A. I told Mr. Johnson that he had been looking for him.

Cross-Examination.

MR. RICHARDS: Mr. Castenado, you worked with Mr. Johnson in Mr. Meserve's lumber yard? A. Yes.

Q. You were a teamster? A. Yes.

Q. And he was a teamster? A. He was working in the yard and I was driving the team.

Q. You are a Democrat, are you? A. Well, I am nothing at all.

Q. Did you vote for Mr. Johnson? A. No, sir; I didn't vote for anybody.

Q. This Mr. Conner is a young blacksmith is he? A. Yes, a horseshoer.

Q. You say he works in Mr. Prindle's shops? A. Not in Mr. Prindle's. There is a partition between the horse shoeing part and the blacksmith.

Q. Mr. Prindle does not run the blacksmith shop? A. I do not know who runs it.

Q. He is in the building in which Mr. Prindle has a carriage shop? A. He has got a carriage shop, a blacksmith shop, and a horseshoeing shop.

Q. Doesn't that horseshoeing shop belong to somebody else? A. I do not know who runs the shop. I take the horses there to have them shod.

Q. Mr. Conner, you say, came there and asked for Mr. Johnson before or after the election? A. I do not remember exactly.

Q. It might have been along in December as far as you know? A. I could not say.

Q. Was Mr. Conner at that time working in the shops? A. Yes, he was working there.

MR. McPIKE: Did Mr. Johnson work there for Mr. Meserve steadily after the election? A. Yes.

Q. Up to what time? A. I do not know what time.

Q. Did he work there steadily before election? A. Yes, he worked pretty steady.

ED. L. SLAGTS.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside? A. 433 Minor Avenue.

MR. BLEDSOE: Where? A. San José.

MR. McPIKE: How long have you lived in San José? A. Fifteen years.

Q. What is your business? A. A contract teamster.

Q. Do you know Assemblyman Johnson? A. Yes.

Q. How long have you known him? A. About four years.

Q. Do you know Major P. L. Barrington? A. Yes.

Q. Were you a member of a club known as the Willow Glen Club, organized in the western part of San José? A. Yes.

Q. During last election? A. Yes.

Q. Was Major Barrington also a member of that club? A. Yes.

Q. And Mr. Johnson? A. Yes.

Q. What office did Mr. Johnson hold, if any? A. President.

Q. Did you sometimes meet Major Barrington out to the club? A. Well, he was there most every meeting.

Q. Did you meet Major Barrington at the club one evening when Mr. Johnson asked you to hear anything the Major had to say? A. Yes.

Q. Did Major Barrington, in your presence in San José, and in the presence of Mr. Johnson, between the first day of July, 1892, and the first day of December, 1892, at a place called the Wigwam, say to Mr. Johnson that Mr. Rea would put two hundred dollars in his fight if he wanted it? A. Yes.

MR. BLEDSOE: Did Mr. Barrington claim to come from Mr. Rea with that offer? A. Yes.

Q. Did he say so? A. He said he could get \$200 from Mr. Rea to put in Mr. Johnson's campaign if he wanted it.

Q. Did he say to Mr. Johnson that Mr. Rea had authorized him to make that statement? A. He didn't say anything about authorizing; he said he could get \$200 of Mr. Rea's money to put in his campaign.

Q. Did he say that he could get that money if Mr. Johnson wanted it, or did he say at that time that Mr. Rea had authorized him to make that offer? A. He did not.

MR. McPIKE: I will ask you whether or not, after the fourteenth day of December, 1892, you called at the office of Major Barrington to see about Mr. Ray M. Smith? A. Well, I do not know exactly about the date, but it was somewhere about that time.

Q. Did Major Barrington, while you were there, ask you why you did not get that money for Mr. Johnson, or did you ask him there, why he did not get that money for Mr. Johnson, and did he reply to you as follows: "Of course, if Mr. Rea let him have the money he would expect Johnson to stand in with him, but as Johnson did not talk favorably he would not loan it to him." Did that conversation take place between them? A. Well, yes, it took place with the exception of one or two words.

Q. What are the words? A. He said that Mr. Johnson would not agree to stand in.

Q. Saturday night, a week ago Saturday night, did you see Major Barrington? A. Yes.

Q. Did you have a conversation with Major Barrington, in San José, a week ago Saturday, as follows: "Did Major Barrington ask you what Mr. Johnson meant by a go-between between him and Mr. Rea, and did he then and there state that there was no go-between, it was simply a business transaction, and Jim Rea cannot prove anything by me?" A. Yes; anything but a business proposition he said.

Q. On election day did you see Mr. Johnson and Mr. MacKenzie together? A. Yes.

Q. Where? A. Well, three or four places, in the Fourth Ward.

Q. Did you see them at Park Avenue and Orchard Streets? A. Yes.

Q. What occurred there between Mr. Johnson and Mr. MacKenzie? A. Well, they had a few words about voting there.

Q. State to the committee just what took place, everything that you recollect, what Johnson said and what MacKenzie said, and what took place there? A. Well, the first I took any notice of was: Mr. Johnson called my attention to Mr. MacKenzie being inside, talking to the voters after they had got their tickets, and he went inside and interrupted Mr. MacKenzie, and they had a few words about the voting. Mr. MacKenzie said that Mr. Johnson would have to get a hundred feet from the polls; that he would have him put there. Mr. Johnson told him that if he

didn't quit buying votes he would have him arrested. Mr. MacKenzie called him a liar, and Mr. Johnson told him to step outside on the sidewalk, and he said he did not take a liar from no son of a bitch.

Q. Did he get into a fight with Mr. Johnson? A. Mr. Johnson seemed to be inclined that way.

Q. What did MacKenzie say then? A. Mr. MacKenzie told him that he would see that he was put away, and he brought an officer there.

Q. What did they do? A. The officer told him to keep quiet or he would make him keep a hundred feet from the polls. Mr. Johnson said, "Well, you take Mr. MacKenzie, and I will go." So MacKenzie said, "We will settle this." Mr. Johnson said to him, "Settle it right now, if you like." So Mr. MacKenzie told him, "I will settle with you before we get through."

Q. Mr. MacKenzie said that? A. Johnson said that. MacKenzie said, "We will settle it," and Johnson said, "We will settle it now, if you want to," and Johnson said, "We will settle it before we get through," and MacKenzie got in his buggy and drove away.

Q. Do you know a young man by the name of Conner? A. Yes.

Q. How long have you known him? A. Something like seven or eight years.

Q. Do you recollect a meeting which took place between Mr. Conner, Mr. Johnson and yourself one evening at the corner of Market and Santa Clara Streets in San José? A. I do.

Q. How was that meeting brought about, do you know? A. Well, the first I know of it, I was driving around in my buggy up town, and I was going by the lumber yard, and in the evening I used to take Mr. Johnson home as a general thing, and one night as I came up there he asked me if I would come up town with him after supper.

Q. You went with Mr. Johnson down to the corner of First and Santa Clara Streets about that hour? A. The corner of Market and Santa Clara Streets; I do not know exactly the hour, somewhere about half past seven or eight o'clock.

Q. Who did you see there? A. Harry Conner.

Q. What was he doing when you got there? A. Standing on the corner.

Q. What did he say to you and Mr. Johnson, or to you, in the presence of Mr. Johnson, or to Mr. Johnson in your presence? A. Well, he bid the time of day, and asked Mr. Johnson to go down to the office.

Q. What office? A. Jim Rea's office.

Q. What did Mr. Johnson tell him? A. He told him no.

Q. What else did Mr. Conner say? A. Well, he asked him three or four times, and Mr. Johnson told him if he wanted to see him, tell him to come up here; that is where I told him I would be.

Q. Who did he mean by he, Mr. MacKenzie or Mr. Rea? A. Mr. MacKenzie.

Q. Did he say anything at that time about what the matter was that they were going to talk about? A. Mr. Johnson told him that they could settle that difficulty just as well there as anywhere.

Q. Did he say anything about what those difficulties were? A. The matter of vote buying, election day.

Q. What did Conner say then, if anything? A. Well, he said he would go down to the office and tell him, and see if he would come up.

Q. Then what took place—did he return? A. He went down there, and came back, and wanted us to go, and I asked him if Mr. Rea was in the office, and he said, "No;" I asked him that about three times; I think two times, anyhow, and he said "No," that Mr. Rea was not there, and Mr. Rea didn't want anything to do with it.

MR. BLEDSOE: To do with what—with the difficulty about the vote buying? A. To explain myself, I will state that we had an idea that Mr. Rea wanted to overhear this vote buying business, and we did not propose it should occur, and that was the reason that I asked him the question.

Q. Did Mr. Conner and Mr. Johnson mention in their conversation anything with regard to the difficulty on election day between Mr. Johnson and Mr. MacKenzie? A. That is the difficulty.

Q. In which Johnson had charged MacKenzie with vote buying? A. That is the difficulty.

MR. MCPHIE: After Mr. Conner had assured Mr. Johnson that Mr. Rea was not there, what took place? A. Well, while he was gone down to the office Mr. Johnson and I walked across the street on to the other side, where the old Post Office is, and while we were standing there talking Mr. Conner said, "He is down there now, down at the driveway, at the Auzeais House," and wanted us to walk down there; so we walked across the street and went down where he was.

Q. After you got there, was Mr. MacKenzie standing there when you got there? A. Yes; standing right in the gate.

Q. Standing right in the gate? A. Yes.

Q. What did he do and what did you do? A. He said, "Come this way," and started back.

Q. Did you follow him? A. Well, we went a little ways and he kept a going, and he stopped; and Conner says go on, and he went.

Q. Where did you go? A. We went away in back; I couldn't exactly tell you where we went now, but Conner said it was MacKenzie's office.

Q. Were you ever there before? A. Never there before or since.

Q. What took place after you got there? A. Mr. MacKenzie and Mr. Johnson went in the little room there, and Mr. Conner and I stayed outside on the boxes of the electric light lamps.

Q. Was any one present? A. Nobody else that I know of.

Q. How long did they remain inside? A. About five minutes.

Q. Did you hear any of their conversation? A. No, sir.

Q. Then what took place? A. Mr. Johnson came out after about five minutes, and we went home.

Q. Are you the gentleman who indorsed a note for Mr. Johnson? A. Yes.

Q. How did you happen to do that? A. Mr. Johnson asked me if I would go on his note at the Union Savings Bank with Mr. Barrington for a hundred dollars, and I told him "Yes;" and I did so.

Q. With Mr. Barrington? A. Yes.

Q. Was Mr. Barrington on the note, too? A. Mr. Barrington was to be on the note.

Q. Did he go on the note? A. He went on it, I think. I am pretty sure he did.

Q. Did you get the money on that note? A. No, sir; Mr. Friant would not take it—at least Mr. S. M. Johnson, the President of the Bank—I

went down there at Mr. H. H. Johnson's request, and he told me that if I would get Mr. C. Meserve to go on the note with me he would give me the money.

Q. Did you report that to Mr. Johnson? A. I told Mr. Johnson that, yes.

Q. Afterwards you went on a note with Mr. Johnson? A. Yes. I went on a note at the Commercial Bank with Mr. Johnson for a hundred dollars.

Q. Mr. Johnson got the money on it? A. Yes.

Q. That is the note referred to here that is dated the 14th of December? A. Yes.

MR. BLEDSOE: Was that the same note you indorsed first? A. No, sir.

Q. Another note? A. Another note they made there at the Commercial Savings Bank.

Q. What became of the other note that you indorsed? A. I tore it up.

Q. Where? A. The day that I got the money for Mr. Johnson at the Commercial Savings Bank.

Q. When was that? A. I think it was the fourteenth of the month.

Q. The 14th of December? A. I believe that is; the day I would not swear positively, but I know I tore it up the day that Mr. Johnson got the money.

Q. Your indorsement was on the note at that time? A. Yes.

Q. How long had it been in your possession before you tore it up? A. It was in Mr. Johnson's possession a week or ten days.

Q. Did you ask him for the note at any time? A. I asked him for the note that day.

Q. Not before? A. Not before.

Q. And yet you knew he was unable to get the money on the first note? A. I did.

Q. Why didn't you ask him for it before? A. Well, I do not know why I did not. I was waiting to see if Mr. Meserve would go on the note.

MR. BULLA: Has the note been paid? A. It has not, that is, not that I know of.

MR. BLEDSOE: You say on election day that Mr. Johnson and Mr. MacKenzie were almost at a fighting point? A. Yes.

Q. And that Mr. Johnson seemed to be in a fighting mood particularly? A. Well, he didn't seem to like the assertion of liar very well.

Q. And accused Mr. MacKenzie of vote buying? A. That is the way he stated it.

Q. Now, is it or is it not well known in San José, that is in politics, that Mr. MacKenzie is an intimate friend of J. W. Rea? A. Yes.

Q. That is well known? A. It is well known.

Q. And isn't Mr. MacKenzie's reputation also of being a lieutenant in politics, of Mr. Rea's? A. That is what they tell me.

Q. Isn't that his reputation in San José? A. Yes.

Q. You were acquainted with that? A. Yes.

Q. Do you know whether Mr. Johnson knew that fact too? A. Well, I never said much to him about it. Of course Mr. Johnson and I understood that they belonged to the gang.

Q. You and Mr. Johnson understood that both Mr. MacKenzie and Mr. Rea were intimately connected in politics? A. Yes.

Q. And didn't you both understand also that Mr. MacKenzie had his office with Mr. Rea? A. No, sir.

Q. In the office of the Electric Improvement Company? A. No, sir; I didn't understand it that way.

Q. When you and Mr. Conner and Mr. Johnson started down to see Mr. MacKenzie, to whose office did you expect you were going? A. I expected I was going to Mr. Dunlap's office.

Q. Were you informed by Mr. Conner before you got down there that that was Mr. Rea's office? A. Well, Mr. Conner said that Mr. Rea's office was in the building.

Q. Was anything said by any one there about not going in the front way because it would not look very good; did Mr. Johnson make that remark that he did not want to go in the front way because it would not look well to go in the front of Mr. Rea's place? A. He said he would not go to Jim Rea's office, yes.

Q. You were going down there to see about this difficulty which had occurred on election day? A. Yes.

Q. Didn't you think it was rather a remarkable thing for Mr. Johnson to be going to Mr. MacKenzie's office to settle that difficulty which had occurred on election day about vote buying? A. We didn't propose to go to Mr. MacKenzie's office. He was to meet us on the corner of Market and Santa Clara Streets.

Q. There to meet Mr. MacKenzie and settle the difficulty? A. Yes.

Q. How did you propose to settle it? A. We were going to see what he was going to do about it.

Q. See who? A. Mr. MacKenzie.

Q. Mr. Johnson was going to have Mr. MacKenzie arrested for vote buying? A. Yes.

Q. And if anything was done you understood Mr. Johnson was to do it? A. Yes.

Q. In the way of having anybody arrested? A. Yes.

Q. What did you mean by saying that you were going to see what MacKenzie was going to do about it? A. Well, it seemed to me that MacKenzie seemed to be kind of anxious about it.

Q. What do you mean to say that you were going down—you and Johnson and Conner, to see what MacKenzie was going to do about it? A. We were going to see what he was going to do about it. That is all there was about it.

Q. You have stated that Mr. Johnson was the one to make the arrest if an arrest was made? A. Yes.

Q. Did he not tell Mr. MacKenzie on election day that he would have him arrested if he didn't quit vote buying? A. Yes.

Q. I want still to understand what you mean by saying that you wanted to go to see what Mr. MacKenzie was going to do about it? A. I understood so, that Mr. MacKenzie wanted to interview him.

Q. On that proposition? A. Yes, on that very proposition, that is what Mr. Conner said, and we went to the corner of Market and Santa Clara to have this interview.

Q. You did not meet him, and then you went down to Mr. MacKenzie's office? A. Well, it seemed to be about the only place you could see him at that time.

Q. That was after night? A. He came out on the street.

Q. That was after dark? A. Yes, after dark; about half past seven or eight o'clock.

Q. And you went in the back way? A. Yes.

Q. To settle a difficulty where a gentleman had threatened to have another arrested for a crime, and you were going there to see what that person was going to do about it? A. Yes.

Q. You were interested in the matter as a friend of Mr. Johnson? A. Yes.

Q. Did you ask Mr. Johnson to allow you to be present at the interview? A. I do not know as I did. No, sir; he asked me to go, and I went.

Q. After the interview was ended, did you know whether the difficulty had been settled or not? A. Well, I know that it had not.

Q. Had not been settled? A. No, sir.

Q. Did you understand by the word settlement that it was to relate to the question whether Mr. Johnson would make information in the Court against Mr. MacKenzie or not? A. That was my understanding, that Mr. MacKenzie wanted to find out if Mr. Johnson was going to take any step towards the case or not.

Q. You say when the interview was over that your understanding was that the difficulty had not been settled? A. Yes.

Q. Has any information been filed in any Court in San José for buying votes on election day? A. No, sir.

Q. Have you, or Mr. Johnson, or any one, to your knowledge? A. No, sir.

Q. Then, that difficulty still remains unsettled, as far as you know? A. That difficulty remains unsettled.

MR. MCPHIE: Did Mr. Johnson tell you after he had seen Mr. MacKenzie that evening what took place between him and Mr. MacKenzie? A. Well, he told me a part of it.

Q. Did you understand, Mr. Slagts, in answer to that question that any settlement of this matter had taken place that night between Mr. MacKenzie and Mr. Johnson so as to change Mr. Johnson's mind with reference to arresting him? A. Well, I do not know as I understood that the interview in particular made the difference. It was a good deal on account of evidence that the thing did not come to a hearing.

MR. BLEDSOE: Now, you say that you went down there to see about settling this difficulty that had arisen on election day? A. Yes.

Q. When Mr. Johnson had charged Mr. MacKenzie with vote-buying. Now the question I put to you that you went down there, as you have testified, with Mr. Johnson, and that Mr. Johnson went into the room with Mr. MacKenzie, and you and Conner waited outside? A. Yes.

Q. Until Mr. Johnson came out? A. Yes.

Q. Then I ask you after Mr. Johnson came out and you went away, whether you understood that the difficulty had been settled between the two men—do you understand the question now? A. Yes.

Q. Answer it. A. I think I do so far as I know Mr. Johnson. I think he informed Mr. MacKenzie that he would not proceed, or had not intended to.

Q. Then the difficulty was settled—did you understand then that the difficulty between them was settled? A. I understood it was settled, yes; so far as the time was concerned.

Q. So far as that time was concerned? A. Yes.

Q. Did you know the state of feeling of Mr. Johnson on election day towards Mr. MacKenzie and Mr. Rea? A. Yes.

Q. What was it? A. It was not very good terms.

Q. Did that state of feeling continue on down to the date of this time when you went to Mr. MacKenzie's office? A. Yes.

Q. Can you state, now, whether from that time up to the time when Mr. Johnson came to the Legislature, do you know what his feelings have been toward Mr. MacKenzie and Mr. Rea? A. Well, I know that he is not on good terms with them as far as I know. At least he never told me that he was. He has been against the gang right through.

MR. BULLA: Has he ever told you that he was? A. Yes.

MR. BLEDSOE: He told you that he was not on good terms with them? A. Yes.

Q. Has he expressed himself to you as being opposed to Mr. MacKenzie and Mr. Rea? A. Yes.

Q. Against them? A. Yes.

Cross-Examination.

MR. RICHARDS: You say that you have lived in San José for how many years? A. About fifteen.

Q. You have been a truckman and teamster, there, have you? A. Teamster, yes.

Q. Now, you know that Mr. Rea was one of the officers of the Electric Improvement Company? A. Well, I did not know that he was an officer; no, sir.

Q. I think that you stated on your direct examination that you knew his office was in the same building there as that of Mr. MacKenzie? A. I supposed it was with Mr. Dunlap.

Q. Now, Mr. Barrington's office and the office of the Electric Improvement Company are in the same building, and all on the same floor? A. Yes.

Q. And open passageways between the offices? A. If I remember right, Mr. Richards, there is a door between the Electric Improvement Company and Mr. Dunlap's office.

Q. And that door in the day time is always open? A. Always open when I was there.

Q. You knew that Mr. Rea's office is right in there, didn't you? A. Yes.

Q. You knew that for some time? A. Yes.

Q. Several months? A. Yes.

Q. You knew that Mr. MacKenzie's office was also there, did you? A. I did not until Mr. Conner told me so.

Q. And he told you so on the night before you went down? A. He told us that on the corner of Market and Santa Clara.

Q. Before you went down? A. Before we went down—that is he told us that Mr. MacKenzie had an office there.

Q. When you went in you went into the office and the rooms of the Electric Improvement Company? A. Well, no, sir; not any room that ever opened in the Electric Improvement Company.

Q. Well, the room that you went into, and the room in which you remained with Mr. Conner—was the room in which were the implements, wires, lamps, and so forth, of the Electric Improvement Company? A. Yes, that's the place.

Q. And it might have adjoined the business office of the Electric Improvement Company? A. I couldn't tell that, because I was never through there.

Q. You was never in the room, then, in which Mr. MacKenzie and Mr. Johnson met? A. Never through the day.

Q. You say that you came down town to meet Mr. Conner on the corner of Market and Santa Clara Streets? A. Yes.

Q. And when you got down there you understood that a meeting was to be arranged between Mr. Johnson and Mr. MacKenzie? A. Yes; we expected to meet Mr. MacKenzie with Mr. Conner, at the corner of Market and Santa Clara Streets.

Q. And when you got there MacKenzie was not there, and you understood he was down in his office? A. In his office, yes.

Q. And you understood that his office there is in the same building with the office of Mr. Rea? A. Yes.

Q. Some question arose at that time as to whether Mr. Rea was down there? A. Yes, I asked the question myself.

Q. Whether Mr. Rea was there? A. Yes.

Q. Did you expect Mr. Rea would be there? A. I did not know whether he would; I thought may be he might be.

Q. And so you inquired whether he was there or not? A. Yes.

Q. Mr. Johnson heard you inquire whether he was there or not? A. Yes.

Q. After the inquiry, and after Mr. Conner had returned and told you that Mr. MacKenzie was in the office, you say you did go across the street and enter the driveway which leads in back to the building in which Mr. MacKenzie's office is? A. We went across the street and we met Mr. Conner at Mr. Spring's store, and when he went down to tell Mr. MacKenzie to come up, that we would be on the corner, we walked across to the other corner by the Post Office.

Q. And then you went across, and you say you met Mr. MacKenzie in this doorway? A. Yes.

MR. BLEDSOE: Is that driveway where the old Auzerais House? A. Yes.

Q. It leads from Market Street? A. Yes.

MR. RICHARDS: And it runs in behind the building for about half a block? A. I suppose you would call it a half a block.

Q. And down that long passage you went with Mr. MacKenzie and Mr. Conner and Mr. Johnson that night? A. Yes.

Q. And went into the implement room of the Electric Improvement Company? A. Yes.

Q. And after you got there Mr. Johnson and Mr. MacKenzie separated from yourself and Mr. Conner and went into some private office inside where you had never been, and in which you did not go? A. They went into a little room there; I didn't go in; I went to the door and looked in.

Q. You were not invited to go in there? A. No; it didn't seem to be that way. Mr. MacKenzie says, "You and Mr. Conner wait outside."

Q. Mr. Johnson didn't ask you to come in, and nobody asked you; you and Mr. Conner waited outside? A. Mr. Conner and I were outside talking, yes.

Q. And these two men who had been on the edge of a fight on election day, two or three days before, went into this private office alone, as you have stated? A. Yes.

Q. Now, when did this meeting occur, what date? A. That I could not tell you, the date I do not remember; it was after election, some ten days or two weeks; it might have been a few days longer.

Q. Ten days or two weeks after election? A. I am not positive as to the time, but I know it was some time after election.

Q. And the subject of their conversation inside there you understood was to be the matter of Mr. MacKenzie buying votes? A. That was the difficulty, sir.

Q. That was the point? A. Yes.

Q. And when they came out you understood that that matter had been adjusted, whatever the difficulty was between Mr. MacKenzie and Mr. Johnson? A. Well, I understood, and the fact of the matter is, it was understood before that that Mr. Johnson would not take any proceedings.

Q. You understood so before that? A. Mr. Johnson and I understood the same thing when he came out.

Q. Now, if you understood that Mr. Johnson did not intend to take any proceedings before that, and Mr. Johnson also understood that, what was there to settle between Mr. MacKenzie and Mr. Johnson on that night which called for such a meeting? A. Well, he wanted to see him.

Q. What was there to settle there that night? A. Well, that is what I wanted to find out myself. Mr. MacKenzie wanted to have an interview with Mr. Johnson in regard to it, and I wanted to find out what he wanted to do. That is just exactly the point that we went there for.

MR. BLEDSOE: How did you know that Mr. MacKenzie wanted to have an interview with Mr. Johnson in regard to that particular matter? A. I took Mr. Conner's word for that.

Q. Did Mr. Conner say that that was the point upon which Mr. MacKenzie wanted to see Mr. Johnson? A. That is exactly what he told me.

Q. You said you were afraid Mr. Rea would overhear the conversation, and you didn't want him to; now what reason had you for not wishing Mr. Rea to hear the conversation? A. When you get into politics down there it don't do for Mr. Rea to overhear it, that's the reason.

Q. It was not a matter which would affect materially Mr. Rea? A. That is it exactly.

Q. What difference would it be to him whether he overheard it or not? A. It made a good deal of difference to me.

Q. It was a matter in which you and your friends held the upper hand if you had information which would send him to State Prison for buying votes? A. Not at all. Down there in politics it is bad business. You think you have many a thing and you don't.

MR. RICHARDS: You were afraid Mr. Rea was in there and he would overhear it? A. Yes, I did.

Q. And after you made the inquiry whether he was there or not, and knowing Mr. Conner was MacKenzie's friend, you simply took his word that Mr. Rea was not there? A. Well, I did not know exactly that he was.

Q. And you took Mr. Conner's word entirely with reference to Mr. Rea being there? A. Well, I have known Mr. Conner for about eight years, and his parents, although I haven't seen him for a couple of years.

He used to be considered an honorable man and his parents were honorable, and I considered his word good at that time.

Q. And you considered Mr. Conner on that night an honorable man? A. I did, yes.

Q. For all that you knew, when Mr. MacKenzie took Mr. Johnson away from you into the office of the company, Mr. Rea and any number of his friends might have been in there? A. No, sir; I looked in the room.

Q. Did you look into the room next to it? A. No, sir; I didn't go through the whole building.

MR. BLEDSOE: Why did you consider Conner an honorable man? Had you heard his reputation discussed by people in San José? A. No, I knew Mr. Conner's folks for about eight years, and also knew him.

Q. Do you know what his general reputation is in San José for truth, honesty, and integrity, did you know it at any time? A. I do not know up to that time.

Q. Did you know up to that time what his general reputation was for truth, honesty, and integrity? A. No, sir; no further than I knew him personally; as I said before, I hadn't seen him for a couple of years.

MR. RICHARDS: Now Mr. Slagts, the result of it is that after that meeting on the corner you and Mr. Johnson were to meet Mr. MacKenzie? A. Yes.

Q. You knew that right down the street was the front door of the building in which Mr. MacKenzie's office was, didn't you? A. Well, I suppose his office was down there somewhere; yes.

Q. You knew the easiest way to go down to get into that office was to go right into the front door that night? A. Well, this was done, you know, that way because I didn't intend to go there at all—because we went down to the gate where Mr. MacKenzie was, and that was as far as I intended to go.

Q. And still you went farther? A. Yes; I did. Yes.

Q. And after you had gone as far as you could go in that back way, through a long passage, and through two or three rooms? A. No; we didn't go through two or three rooms—one room.

Q. Into a vacant or a large room, and you then allowed your friend Mr. Johnson to go farther, alone with a man whom he was accusing of buying votes, and with whom he had a fight a few weeks before, or almost a fight; that is a fact, is it not? A. That is a fact.

MR. BLEDSOE: Was there a light in those rooms? A. Yes.

Q. Did they close the door after them—Johnson and MacKenzie? A. Yes; I went to the door and looked in, and Mr. MacKenzie said, "You wait outside for a few minutes."

MR. RICHARDS: Did Mr. Johnson ever tell you that after that time he went to the office of the Electric Improvement Company office eight or ten times to meet Mr. Rea? A. No, sir.

Q. Never told you that? A. No, sir; he told me he went once to see Mr. Rea. He was there twice; he went once with Mr. Barrington, and went once afterward.

MR. BLEDSOE: When did he tell you this, before you went down there or afterwards? A. This was afterwards, this was just before coming to Sacramento.

MR. RICHARDS: Did he tell you on what day he called the second time? A. Well, he might have told me; I do not remember it.

Q. Do you remember whether it was Saturday? A. I think it was.

Q. Did he tell you how long after the first visit this second was? A. Well, I do not know; it seems to me about two or three days afterwards.

MR. BLEDSOE: Did Mr. Johnson ever seek your advice as a friend as to the advisability of attempting to borrow money from J. W. Rea?

A. No, sir.

Q. You were a friend of Mr. Johnson's, wasn't you? A. Yes.

Q. An intimate friend? A. Yes.

Q. So much a friend that you were willing to indorse his note? A. Yes.

Q. And, at any time, did he ever seek your advice about borrowing money from Mr. Rea? A. No, sir.

MR. RICHARDS: You say that Mr. Barrington and Mr. Johnson and yourself were members of the Willow Glen Club? A. The Willow Glen Club.

Q. That was a Democratic Club? A. Yes.

Q. You took quite an active part in the campaign, did you not? A. Yes.

Q. Major Barrington, as one member of that club, also took an active part in that campaign? A. He did; he was Major of the drill corps.

Q. That club was very active in furthering the election of Mr. Johnson? A. I believe so, yes.

Q. And the Major, as a member of that club, was also very ardent in his support of Mr. Johnson? A. Done what he could, yes.

Q. He went on the stump and spoke for him? A. Yes.

Q. Mr. Johnson and Mr. Barrington were frequently together? A. Yes.

Q. Both during the campaign and after? A. Well, of course during the campaign Mr. Barrington came out there to almost every meeting; of course I do not know as to how they met afterwards. Of course they sometimes did, I know.

Q. This proposition which you say Major Barrington made to Mr. Johnson to get two hundred dollars of Rea's money to put into his fight—when was that during the campaign; was it just before election, or two or three weeks before? A. I think something like that.

Q. After Major Barrington had made that proposition, he continued a member of the club, did he? A. Yes.

Q. And continued to make speeches in favor of Mr. Johnson? A. Yes, I guess he spoke in favor of Johnson; as far as I know; I never heard Mr. Barrington say anything against Mr. Johnson during the campaign.

Q. He said everything he could in his favor? A. He might have said more if he had a mind to; he said enough, I suppose.

Q. After this conversation that you speak of they continued to be friends, and to work together in the campaign? A. Well, Mr. Barrington came around just the same as he always did.

Q. And Mr. Johnson went with him just as he always did? A. There was practically no going with him about it. Mr. Barrington came out there generally in a gurney cab, and did his speaking and took his cab and went home.

Q. Mr. Johnson and he went around together down to the time of Mr. Johnson's election? A. I do not know of any place that they went during the election together. In the Fifty-fourth District, as a general thing, Mr. Johnson and I were together.

Q. During all of the campaign, so far as you know, there was not a single break in the friendly relations between Johnson and Barrington? A. Well, there were a good many things that were not exactly satisfactory with Mr. Johnson and myself both, on Mr. Barrington's part.

Q. I refer to Mr. Barrington and Mr. Johnson? A. With Mr. Johnson there were several things that were not satisfactory.

Q. But they continued to be co-workers down to the day of election? A. Well, the whole Democratic ticket depended on the success of the workers, and so one man was as much as the other.

MR. BULLA: With reference to this conversation that you have spoken of, at which Major Barrington said that he could get two hundred dollars of Rea's money to put into the fight, was there any reason given why Mr. Rea, a Republican, should put two hundred dollars into Mr. Johnson's fight? A. Well, the reason that I inferred from it, he wanted Mr. Johnson to stand in with the gang.

Q. Was there any specified reason given at the time—it was an inference of yours? A. It was pretty well understood at that stage of election that Mr. Johnson was a sure winner.

Q. What did you understand that they meant by standing in with the gang? A. Well, I understood it, that they wanted Mr. Johnson to stand in with the faction.

Q. Is that faction a local matter down there? A. Well, it seems to be somewhat overland.

Q. Did you understand that Mr. Johnson's course in the Assembly or in the Legislature was to be governed or dictated by Mr. Rea, if he put his two hundred dollars in the fight? A. That was to be the idea exactly.

Q. Anything said about standing in with the Commission? A. No; Mr. Barrington said nothing about the Commission that night.

Q. Did you infer anything about it? A. No, sir; I asked no questions at all.

Q. Your inference was all drawn from what the Major said at the time? A. Yes, what I know about it. Part of it is imaginary. He made the proposition and I drew on my imagination from that.

Q. Do you mean to say that nothing was said about standing in with the gang that night? A. No, sir.

Q. That was a mere inference of yours? A. Nothing was said about standing in with the gang that night.

Q. Did you and Mr. Johnson talk that matter over between you? A. That night?

Q. Yes. A. Mr. Johnson told Mr. Barrington that he did not want the money, and he had no use for Jim Rea's money.

Q. Did you and Mr. Johnson talk it over? A. Yes; we talked it over after the meeting when we went home.

Q. And what conclusion did you come to as to what the Major wanted? A. We came to the conclusion that the Major wanted to own Mr. Johnson in the Legislature.

MR. RICHARDS: You then believed, did you, that Mr. Rea was seeking to buy Mr. Johnson through Major Barrington, that was the conclusion that you and Mr. Johnson came to? A. No; we concluded that either one of two things—it was either the Liquor Traffic or Mr. Rea.

Q. You did not know which? A. We did not know which.

MR. BLEDSOE: Was that Mr. Johnson's understanding? A. That is what we talked.

Q. That is what you talked with Mr. Johnson? A. Yes.

Q. That Mr. Rea was trying to get hold of him through Mr. Barrington? A. Yes; one of two things, that either Mr. Rea wanted to get hold of him, or Mr. Barrington wanted to get hold of him for the Liquor Traffic. He said it was Rea's money; whether it was Rea's money I do not know.

Q. The second note made at the time and you indorsed for Mr. Johnson at the time he borrowed the money on the 14th of December? A. Yes.

Q. When did Mr. Johnson speak to you about the making of the second note, and about indorsing the second note? A. That day, I think.

Q. Did he tell you of any efforts made by him to secure money on the first note? A. Yes; he told me about two or three days before that.

Q. Did he tell you that he had been to the people with the note, and had been unable to get the money on it? A. He told me Major Barrington had tried to get it for him.

Q. Did he tell you anything about attempting to borrow money from Mr. Rea on the note? A. He told me Mr. Barrington took him to Mr. Rea to borrow money on the note.

Q. When did he tell you that—on the day you made the note or afterwards? A. It was before that—about a couple of days, I believe.

Q. Is that the first time that he said anything to you about borrowing money from Mr. Rea? A. Yes; that was the first time he ever said anything to me about borrowing the money from Mr. Rea. He told me that Major Barrington had taken him to Mr. Rea.

The committee here adjourned until to-morrow evening at 7 o'clock.

THURSDAY, February 16, 1893.

JOHN BROWNLIE.

Recalled.

MR. MCPIKE: Mr. Brownlie, you were on the stand a few evenings ago and testified that you went to San José to see Assemblyman Johnson after the election; are you able now to fix the date any more particularly than you were when you were on the stand? A. Yes.

Q. What is the date upon which you visited San José to see Mr. Johnson? A. On the 15th or 16th.

Q. Of what month? A. Of December; I stayed there part of the 16th, and went away on the 16th.

Q. Is that the only visit that you made to San José during the month of December? A. That is all.

Q. Did you go to Mr. Johnson's house on the evening or morning the first time that you went there? A. I went in the evening first. I went twice one evening.

Q. Did you see Mr. Johnson on either of those occasions? A. I saw him on the next day, the 16th. He was not at home, so I left word with his wife, I would come back in the morning.

Q. That is the occasion upon which you gave him the card? A. Yes.

MR. RICHARDS: How have you been able to fix this date? A. Well, I thought the matter over, and I knew I had to be back to a meeting of

the San José delegation, at the California Hotel, and I had to be there Sunday night. I remember, I was in Tres Pinos Sunday morning, and I was in Gilroy, and was waiting for the train.

Q. You fixed this date from the facts you have just stated? A. Yes.

Q. And remember those facts also? A. Yes.

Q. Where did you stay in San José? A. I couldn't tell you the number, it was on Santa Clara Street, I think between First and Second.

Q. What was it, a hotel? A. A hotel or lodging house, I do not know which, may be one and may be both.

Q. You say it was Santa Clara, between First and Second? A. I think Santa Clara—that main street. I do not know whether between First and Second or not.

Q. Did you register? A. I believe I did, I wouldn't be sure of that, but I think I did; I know I registered down at Tres Pinos the next day.

Q. Did I understand you to say that you went from San José to Tres Pinos? A. Yes.

Q. Or from San José to San Francisco? A. From San José to Tres Pinos.

Q. How long did you remain at Tres Pino? A. I remained there until Sunday morning.

Q. How long was that? A. That was the 16th, in the afternoon, until Sunday morning.

Q. How many days? A. Two days—a day and a half.

Q. Where did you stay at Tres Pinos? A. It is the main hotel in the town, I do not know any of the streets; I think it is the Western, or the New Western; it is right on the corner, right opposite the railroad depot.

Q. Where did you go from Tres Pinos? A. I went back to San Francisco. I came as far as Gilroy and I had to wait for the train.

Q. How long did you wait in Gilroy? A. Three or four hours.

Q. Did you go to the hotel in Gilroy? A. No, sir; it was in the daytime.

Q. Who did you go to see in Tres Pinos? A. Nobody in particular. I went down thinking I would see Mr. Mathews, but he lives about twenty-three or twenty-four miles out in the country, and a little too far for me to go, and I couldn't get back in time, and I didn't think I would go.

Q. Did you see anybody in Tres Pino you knew? A. No, sir.

Q. Did you see anybody in Gilroy you knew? A. No, sir.

Q. From the time you left San José until you returned to San Francisco did you meet any other members of the Legislature than Mr. Johnson? A. No, sir.

Q. Have you a card similar to the one you said you gave Mr. Johnson? A. No, sir.

Q. Mark this card with those five names, using the pencil you used. A. I haven't the pencil that I used there; I do not know what pencil I used.

Q. Mark it exactly as you marked the other card, taking your time to mark it.

[The witness here marked the card.]

A. What do you want me to mark?

Q. I want you to mark the names that you had on the other card; I want you to mark this as you marked those names; if you marked those

names with a cross I want you to mark these with a cross, and if you marked those with a line, I want you to mark these with a line? A. There are five there; that is all I remember. I do not remember putting two marks after them; I do not remember about that.

MR. BLEDSOE: How do you happen to remember the five names? A. I do not remember them all; I remember those five. You asked me about candidates' names, and I told you I couldn't tell whether I marked them or not. I saw the five there the other night.

Q. In making these marks on the card, do you think you have marked this card in the same manner? A. I do not know whether I have or not. Do you want me to make these exactly on the line with the others?

Q. I want you to mark as near as you possibly can? A. This is as near as I can get to it. I do not take a rule and rule them off when I mark a card.

Q. I understand you to state that you cannot remember any other name that you had on that card than these five? A. That is what I said.

MR. BLEDSOE: Are you able to state positively how many visits you made to Mr. Johnson's residence? A. I think I made three.

Q. Three altogether? A. Two one night and one the next day.

Q. Are you positive of the number? A. I am, yes, I am pretty sure of it. I wouldn't be sure whether I went there three times that night or two. He was not at home. There was a friend of Mr. Johnson's that brought me to his house in a buggy, and I do not know whether he took me two or three times. He might have taken me three times in one night. I do not know the name of the man.

Q. That is what I want to get at whether you know positively or not? A. I think it was three times that I was there that night.

Q. That makes four altogether? A. Yes, because he rode me down into town and back; and I remember it was three times. I am positive I went there three times.

Q. You are positive? A. Yes.

Q. What time did you go there the first time? A. It must have been about six o'clock.

Q. What time the second time? A. It must have been about half past seven.

Q. And then what time the third time? A. About eleven o'clock, and I got tired going and left word with his wife that I would be there in the morning.

Q. It was eleven o'clock when you went there the third time? A. I went there and stayed there just a minute.

Q. Are you positive of that? A. Yes.

Q. You are positive on the third trip you only stayed about a minute? A. Yes, not longer than that, a minute or two.

Q. How long did you stay the second time when you went about half past seven? A. I probably stayed about five minutes.

Q. How long did you stay the first time? A. Only just went and asked if he was home and said I would call back again.

Q. Are you positive about these statements as to about the hours you went and how long you stayed? A. I couldn't tell within a quarter of an hour or so, probably, but it was around about that time.

Q. Are you positive that on the second visit there you stayed five minutes? A. About that.

Q. And the last visit about a minute or two? A. Yes, it was late.

MR. CHAIRMAN: Did you look at your watch? A. No, I did not. I didn't stay any length of time, I know that.

MR. McPIKE: Look at this card, Mr. Brownlie, and observe the marks on that card. Turn it over and look at it on both sides. Did you have a pencil at any time that would make marks similar to those? A. I believe I did.

Q. An indelible pencil? A. Yes.

Q. Was it such a pencil as this? A. One of those you push the lead out.

Q. One of those you push the lead out by touching a spring at the top? A. Yes.

Q. You also had a lead pencil? A. Yes.

MR. RICHARDS: Where did you get that indelible pencil? A. I do not know as I can tell exactly where I did get it. I think I bought it some place in town.

Q. Do you remember when you bought it? A. No, sir; during that month or so; I do not know how long I had it.

Q. Are you accustomed to carrying indelible pencils? A. Yes.

Q. What did you do with the pencil? A. I do not know what became of it.

Q. Have you an indelible pencil now? A. No, sir; I do not think I have; I may have one home.

Q. Have you had one here during the session of the Legislature? A. No, sir; I have not.

Q. Do you know how long it was after the marking of this card that you lost the pencil with which you claimed to have marked it? A. No, sir.

Q. As I understand you, then, you state you do not know where or when you got that pencil, nor what you have done with it? A. No, sir; I do not.

Q. Since you lost that one you have not provided yourself with another? A. No, sir.

H. A. MASON.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside? A. San José.

Q. How long have you lived there? A. This last time I have lived there a little over a year—going on a year and a half.

Q. What position do you hold, if any, at the present time? A. I am one of the Assistant Clerks of the Assembly.

Q. Do you know Assemblyman Johnson? A. I do.

Q. Did you know him between the 1st and 10th of December last? A. I did.

Q. Did you see him in San José between those dates? A. Yes.

Q. Did you have any conversation with him with reference to a card? A. Well, not any, particular.

Q. Did he give you a card? A. Yes.

Q. Examine that, and see if it is similar [handing card to witness]. A. Yes, he gave me a card similar to this.

Q. Between those dates? A. To the best of my recollection.

Q. Did you notice whether the card was marked or not? A. No, sir; I did not.

Q. That was known as a Healy card? A. Yes; that is one probably issued by Thomas E. Healy.

Q. Did you ever give that card back to Mr. Johnson? A. I do not think I did.

MR. RICHARDS: I understood you to say you do not know whether it had any marks on it or not? A. No, sir.

MR. McPIKE: I desire to have this card marked by Mr. Brownlie, and the one just shown Mr. Mason, and let it appear in the notes that this is the same card marked by Mr. Brownlie, to-night, in the presence of the committee.

[The card was marked exhibit "5."]

Q. Is there anything in your mind by which you can fix very near the date upon which Mr. Johnson gave you that card? A. No, I cannot; only I know it was probably about three weeks before I came to Sacramento.

Q. About three weeks before you came here? A. Yes.

Q. To the best of your recollection that was between the 1st and 10th of December? A. That is to the best of my recollection, yes.

Q. I want to get at the time as near as you have it in your mind. A. I could go on and state the reason why I remember it as near as I do.

Q. As near as you can recollect it was between the 1st and 10th of December? A. Yes.

THOMAS E. HEALY.

Called and sworn, testified as follows:

MR. McPIKE: Where do you reside, Mr. Healy? A. In San Francisco.

Q. Do you hold any office at the present time? A. Yes, I am Sergeant-at-Arms of the Assembly.

Q. Did you print or cause to be printed any cards with your name on the back known as the Healy card? A. I caused to be printed in the form of a card "Thomas E. Healy, candidate for Sergeant-at-Arms."

Q. Will you examine that card and see whether that is one of them? A. I couldn't say positively, but it looks like one of them. I should judge that was one.

Q. It was similar in all respects to the ones you had printed? A. Well, it looks like one, yes; and I had among them four or five different colors.

Q. That is the color of one of them? A. Yes.

Q. When did you have those cards printed? A. About the 1st of December.

Q. Did you do anything with any of those cards after they were printed? A. I sent them to different members of the Legislature.

Q. Did you address those cards to each member of the Legislature? A. Yes, I addressed them, but I did not send them.

Q. Some one else mailed them for you? A. Yes.

Q. Did you put the cards in an envelope? A. I think I did, all of them.

Q. How many did you put in each envelope? A. One; I am pretty certain of that.

Q. What was the date, about, that you mailed those cards, or caused them to be mailed? A. I did not mail them at all.

Q. About when did you cause them to be mailed, or give orders? A. I didn't give orders at all.

Q. Have you any idea of about when they were mailed? A. On the 4th of December, on Sunday afternoon.

Q. On the 4th of December, Sunday afternoon? A. They were not mailed then, not according to my own knowledge; I mailed them on the 5th.

Q. Did you give orders to have them mailed? A. Well, I told Mr. Hall to mail them on the next day, and I think he did so.

Q. You never had others printed but the one lot? A. One lot; that is all.

MR. BLEDSOE: Were they different colors? A. Yes; they were different colors.

MR. HURLEY: Who printed your cards? A. Hancock Bros.

MR. BLEDSOE: You had some left? A. Yes; I believe so.

Q. How many did you have printed altogether? A. Three hundred.

Q. And after you mailed one to each member of the Legislature, you gave the others away? A. Yes; at different times I have given cards to my friends.

Q. Those three hundred were all circulated around, I presume? A. No; I have some now. I might possibly have ten at home.

Q. You do not mean to say that the eighty cards sent to the members of the Assembly were all you sent? A. Why, no; there were one hundred and twenty—forty for the Senate and eighty for the Assembly. Every member of the Senate and Assembly received one. So far as the San Francisco delegation was concerned, they could come and get as many as they pleased. They came down to my office, and got what they wanted.

Q. Those were mailed on the 5th? A. Don't misunderstand me. I see by the bill, it was on the 2d of the month I went to demand these cards; and on the 3d of the month they were scored, and they wanted more pay, and I said I wouldn't pay no such a thing; and on the 3d of the month I paid the bill, and got the cards; and on the 4th I sat down with Mr. Hall, and I put the cards in an envelope in that way; and on the 5th of the month he sent them away, he told me.

Q. Did he address the envelopes? A. No, sir; I did.

Q. Did you address one to Mr. Johnson of San José? A. Yes, not knowing him at all at the time. That was on the 5th of December and on the 5th they should have gone, for on the 4th they were addressed, Sunday afternoon.

Q. And among others you addressed one to Mr. Johnson, the Assemblyman? A. To every one of the Assemblymen.

Cross-Examination.

MR. RICHARDS: Mr. Healy, your purpose in sending out these cards was to further your effort to get elected to the office you hold? A. It was to secure my own election and nobody else.

Q. A number of the San Francisco delegation were your friends and were also working to secure your election? A. I should say that eleven of them were.

Q. Not less than eleven? A. Yes.

Q. And they were active workers? A. Yes, they thought, my friends from San Francisco, that I made a good record in local politics and that I was entitled to this.

Q. And they came and got these cards from you? A. At different times.

Q. You do not know how many these eleven men got? A. No, and don't get this thing wrong. I don't want anything misunderstood here. The former witness here, John Brownlie, he was the most earnest worker I had. I have known Johnnie since he was a boy and he did all he could to further my election.

Q. Was he making a particular fight for you? A. Yes.

MR. RICHARDS: Mr. Brownlie came and got a good many of those cards? A. Yes, at different times. I have a place of business on Folsom Street, where I have five men to work right straight along for me. I inquired yesterday when I was down below; I should say last night. I asked my wife, I said, "Has Brownlie been here at all?" And she says, "Why of course on two different occasions he came here and got cards when you were not here."

Q. The other ten also got these cards, didn't they? A. At different times, yes.

Q. And futhering your effort to be elected, they sent these cards out and handed them to people who were working for you? A. Yes, they did it, that's a fact.

MR. BLEDSOE: Between your fight and the Senatorial fight, do you know in which Mr. Brownlie took the most interest? A. In mine.

Q. And when did he begin this particular fight for you? A. After he was elected to be Assemblyman.

Q. Before the 1st of December. A. I should say so.

MR. BULLA: Do you know if he was interested in the Senatorial fight at all? A. Yes.

Q. And he was making something of a fight on your line also? A. He was.

Q. Do you know whether he was interested in the Speaker's fight also? A. He was to a certain extent. If you will allow me to explain I will just make a statement right here, if you will allow me to go ahead. Johnnie Brownlie and I had been schoolmates, and he's got a brother named Jim. Jim Brownlie and I used to be schoolmates. Jim Brownlie tends bar out on Market Street, near Eighteenth, and a black Republican, too.

MR. BLEDSOE: The only point was whether Mr. Brownlie was making a particular fight for you? A. I just want to explain. I am placed in a peculiar light, and I want to be placed right. I am here subpoenaing witnesses and now placed on the stand, and I don't like this.

C. C. DUHAIN.

Called and sworn, testified as follows:

MR. MCPHIE: Where do you reside? A. Sacramento.

Q. How long have you resided in Sacramento? A. A little over six years.

Q. Are you an officer of the State? A. No, sir.
 Q. Do you hold any office? A. State Janitor.
 Q. Did you during the last campaign, or after election, cause any cards to be printed? A. Yes.
 Q. Will you examine this card and state whether or not that is one of the first cards that you gave out or caused to be printed? A. That is the first.
 Q. That is of the first lot? A. Yes.
 Q. Have you any memorandum by which you can refresh your memory as to the time you had those printed? A. Yes.
 Q. Produce it, please, and refresh your memory by referring to that memoranda; can you tell when it was that you had these cards printed? A. I know they returned from the State Printer on December 1st.
 Q. Did you do anything with them after that? A. I sent one to each of the members of the Legislature.
 Q. Do you know the date of the mailing? A. Well, it was between the 2d and 4th. I started to mail them on the 2d and got through I believe on the 4th.
 Q. You sent one to each member of the Legislature? A. Yes.
 Q. Through the mail? A. Yes.
 MR. MCPIKE: I wish to put this card in evidence and have it marked exhibit "6."
 MR. BLEDSOE: Did you mail one of those cards to Mr. Johnson of Santa Clara? A. Yes.
 Q. When did you mail it? A. Between the 2d and 4th of December.
 MR. RICHARDS: You sent this card to Mr. Johnson between the 2d and 4th? A. Yes.
 Q. Is this one of those cards? A. Yes.

J. C. SIMS.

Called and sworn, testified as follows:
 MR. MCPIKE: Your name is J. C. Sims? A. Yes.
 Q. You are a member of the Assembly from Santa Rosa, Sonoma County? A. Yes, the Seventeenth Assembly District.
 Q. Do you know Assemblyman Johnson? A. I do.
 Q. When did you meet him for the first time? A. I saw him for the first time in a Democratic caucus on the evening of January 2d, Monday evening.
 Q. Monday evening, January 2, 1893? A. Yes.
 Q. You had no acquaintance with him until that time? A. No, sir; I never saw Mr. Johnson until that time; I do not remember that I met him that evening; I never corresponded with him; I didn't know anything of him nor about him.
 Q. You did not correspond with him and didn't know anything about him? A. Not at all; I do not know anything about him at all.

BERT SCHLESINGER.

Called and sworn, testified as follows:
 MR. MCPIKE: Your name is Bert Schlesinger? A. Yes.
 Q. Where do you reside? A. In San Francisco.
 Q. How long have you resided in San Francisco? A. About fifteen years.
 Q. Do you hold any office at present? A. Assemblyman from the Thirty-eighth District.
 Q. Do you know Assemblyman H. H. Johnson, of Santa Clara? A. I do.
 Q. When did you first meet him? A. On the night of the 2d of January, 1893.
 Q. Where? A. At the Democratic caucus held in Sacramento.
 Q. Had you ever corresponded with him? A. Never.
 Q. Prior to that date? A. No, sir; nor since.
 Q. Did you ever hear from him in any way? A. No, sir.
 Q. Did you ever send any message to him? A. No, sir.
 Q. In fact, did you know that there was a man by that name in the Assembly? A. Never heard of him.
 Q. You are an attorney at law? A. Yes, 206 Sansome.
 Q. I will ask you whether or not your office was ever made a general headquarters there in San Francisco for what is known as the San Francisco delegation? A. The members of the delegation frequently called there. In fact the delegation held their meeting there in December.
 Q. Do you know Mr. Hurley? A. I do.
 Q. Was he in your office? A. He was, with other members of the delegation.
 Q. Before the 1st of December after the election? A. After the election; yes.
 Q. You are the gentleman who introduced a bill here in the Assembly, I believe, in regard to the State Board of Railroad Commissioners, and with reference to the said Board? A. I introduced a resolution to remove the Commissioners from office.
 MR. RICHARDS: You met then your fellow members of the Assembly from San Francisco? A. Yes, we would meet at the office frequently.
 Q. After the election? A. Yes.
 Q. Do you remember whether any one of those meetings was before the 1st of December? A. That I cannot tell. I think not. I think they were between the 1st of December and the 1st of January; that is my best recollection.
 Q. Do you remember whether the members of the San Francisco delegation were in your office, not to attend to official meetings during the month of November? A. Well, likely some of the members were there. Very likely. I think Mr. Hendrickson has been there, and Mr. Cusick, and Mr. Brownlie, and several others whose names I cannot recollect.
 Q. I presume that among the other members of the San Francisco delegation who called at your office was Mr. Hurley? A. I believe he was there twice or three times.
 Q. Do you remember the date on which the first of those meetings was held? A. I would put it about the first of December. I wouldn't

state this as a positive fact. That is my present recollection, about the first of December, I think about that time.

Q. You mean by that, about the first, within a day or two of the first? A. I would not limit myself to within a day or two, because I might be mistaken about it. I would say within a week. We had, I believe, altogether three evenings at my office, that is, meetings of the entire delegation.

Q. One of those meetings you think was about the first week in December? A. Yes, I desire to correct this if I find I have misstated the fact. I will find out before leaving the chamber. Several of the members are here and I will find out.

Q. Had you known Mr. Sims before that time? A. Never met him before I met him for the first time at the Democratic caucus held in this city.

Q. And Mr. Schroebel either? A. The same statement applies to him.

MR. BLEDSOE: You say you introduced a resolution—you introduced a resolution calling for an investigation of the Commissioners, did you not? A. The resolution I introduced was to investigate, and that the committee should report articles of removal if in their judgment it would seem necessary. I introduced the same resolution that has been acted upon in the Senate. In other words, they have adopted my resolution, and rejected your resolution. I believe the bill was made this afternoon.

MR. RICHARDS: The resolution you introduced was in harmony, at least so far as investigation went, with the request of the Commission? A. It was to remove them in case the investigation showed that an investigation ought to be had, and the substitute was to remove them without investigation, and the Senate, by its action, has rejected that.

D. J. B. SCHROEBEL.

Called and sworn, testified as follows:

MR. MCPIKE: Your name is D. J. B. Schroebel? A. It is, sir.

Q. Where do you reside? A. Three miles east of Milton, in Calaveras County.

Q. How long have you resided in Calaveras County? A. I was born and raised there. Lived there all my life.

Q. Do you hold any office at the present time? A. Yes; Assemblyman from the Twenty-seventh District.

Q. Do you know Assemblyman Johnson? A. I do.

Q. When did you first know him? A. I do not exactly know. It was a great many years ago when he was a boy I met him a few times.

Q. Did you ever go to school with him? A. No, sir.

Q. You only had a passing acquaintance with him? A. That is all.

Q. How many years ago? A. I couldn't say. It is a great many years, though.

Q. Ten, fifteen, or twenty? A. Fifteen years, at least. Fifteen or twenty, it is a long time.

Q. Had you any communication with him between that time—the time he left there and the 15th of December, 1892? A. No, sir.

M. J. HURLEY.

Called and sworn, testified as follows:

MR. MCPIKE: Your name is M. J. Hurley? A. Yes.

Q. Where do you reside? A. San Francisco.

Q. How long have you resided in San Francisco? A. Thirty years. I call it home.

Q. Do you hold any office at the present time? A. I represent the Thirty-third Assembly District.

Q. Do you know Assemblyman Johnson? A. I do.

Q. When did you first become acquainted with him? A. Thursday preceding the 1st of January.

Q. Where? A. On the train from San José to Stockton.

Q. Previous to that date did you ever have any conversation with him of any kind, or ever meet him? A. No.

Q. Did you know of him even up to that date? A. Only by seeing his name on the card.

Q. You had no communication with him, and sent him no message? A. No.

Q. And received none from him up to that date? A. No.

H. H. JOHNSON.

Called and sworn, testified as follows:

MR. MCPIKE: Your name is H. H. Johnson? A. Yes.

Q. You are a member of the Assembly, Mr. Johnson? A. Yes.

Q. And you are respondent to these charges which were made by Mr. James W. Rea, Railroad Commissioner of this State? A. Yes.

Q. Where do you reside? A. I reside in what is called Willow Glen.

Q. In what county? A. Santa Clara County.

Q. What Assembly District of this State do you represent? A. The Fifty-fourth.

Q. How long have you resided in San José? A. About six or seven years.

Q. Be as definite as you can; is it six or seven? A. I think it is between six and seven. I think that this next October will be seven years.

Q. Where did you reside before you went to San José? A. I resided in Livermore, Alameda County.

Q. How long did you reside there? A. About twelve years.

Q. After you resided in Livermore where did you reside? A. In Calaveras County.

Q. Where were you born? A. Calaveras County.

Q. How old were you when you left Calaveras County? A. I was about sixteen or seventeen the first time.

Q. You went away and returned? A. Yes.

Q. Where did you go? A. Went to Eastern Oregon.

Q. How long did you remain there? A. About a year and a half.

Q. And returned to Calaveras County? A. Yes.

Q. And remained how long? A. I think just one winter.

Q. Where did you go then? A. To Livermore.
Q. Where were you married? A. In Livermore.
Q. And your wife has testified that you have four children? A. Yes.
Q. What business were you engaged in, if any, in Calaveras County?
A. Well, not a great deal of anything; I went to school most of the time; my father had a ranch there.
Q. When did you begin to earn your own living, if ever? A. Well, I was about twelve years old.
Q. Have you since you were twelve years old earned your own living?
A. Yes.
Q. Did you ever receive any other education than you received in the public schools in Calaveras County? A. Never but what I have studied myself.
Q. Have you ever read law? A. Yes, sir.
Q. Have you ever read Blackstone's Commentaries? A. Yes.
Q. Have you ever read the Codes of California? A. Yes.
Q. All of them? A. Yes.
Q. Did you ever read the Constitution of the United States? A. Yes.
Q. And of California? A. Yes.
Q. Have you done other reading besides those? A. Yes, a great deal.
Q. And this reading have you done at your home at nights? A. Yes.
Q. And mornings? A. Not much in the morning, but generally in the evenings and Sundays.
Q. What did you do while at Livermore; what business were you engaged in? A. I had a ranch there, a piece of land; one hundred and sixty acres.
Q. Where did you obtain it? A. Government land.
Q. Did you preempt Government land? A. Yes.
Q. From there you went to Santa Clara County? A. Yes.
Q. And have been there for the last six years? A. Yes.
Q. What have you been doing in Santa Clara County since you went there? A. I have been in the lumber yard ever since I was there.
Q. Whose lumber yard? A. I was in Charlie McKernin's one year and then I went to Meserve's.
Q. And have been in Meserve's since? A. Yes.
Q. What salary have you been earning? A. Fifty dollars a month.
Q. Had you any other source of income? A. No, sir.
Q. Have you had any other source of income since you went to Santa Clara County other than your salary of fifty dollars a month? A. No, sir.
Q. Do you own your own home? A. Yes.
Q. When you went to Santa Clara County did you have any means?
A. I had about two hundred dollars.
Q. Have you purchased a home which you own in San José from the proceeds of your labor? A. Yes.
Q. When did you first, if ever, become active in politics? A. Well, I have always taken more or less part in politics ever since I have been twenty-one.
Q. Ever since you have been twenty-one? A. Yes.
Q. Did you ever run for or aspire to any office until you ran for Assemblyman? A. No, sir.

Q. Do you know a club in San José that was organized during the last campaign called the Willow Glen Democratic Club? A. Yes.
Q. Are you a member of that club? A. Yes.
Q. Did you hold any office in the club? A. Yes.
Q. What? A. I was President of it.
Q. Where is that club house situated, if you had a club house? A. It is situated just on the outside of the city limits, in what is called the Willow Glen.
Q. Do you know Major P. L. Barrington? A. Yes.
Q. Was he a member of that club, also? A. Yes.
Q. When did you first become acquainted with Major P. L. Barrington? A. There is a club in the city of San José—I think it is called the Santa Clara Democratic Club. I went down there to visit them one night, and was introduced to Major Barrington in that club.
Q. What date was that? A. I think that must have been about the last of August or the first of September.
Q. From that time on did you often see Major Barrington at the club?
A. Yes.
Q. And in San José? A. Yes.
Q. I mean in other parts of San José? A. Yes.
Q. You were merely acquainted, and you got better acquainted with the Major after awhile? A. Yes.
Q. Did he support you during the campaign? A. Yes, I believe he did.
Q. You know he did, do you not? A. Yes.
Q. Did you advertise in his paper? A. Yes; I placed my political card in his paper.
Q. Do you recollect whether or not you met Major Barrington one evening at the Wigwam, about 10:30 o'clock, on an occasion when Mr. Slagts was there? A. Yes.
Q. About what date was that? A. I think that was about two weeks before election.
Q. Did you have any conversation with Major Barrington on that occasion? A. Yes.
Q. Did that conversation take place in the presence of Mr. Slagts?
A. Part of it.
Q. Relate the conversation which took place between you and Major Barrington which Mr. Slagts heard. A. Well, after the meeting was over, Mr. Barrington said he would like to see me a moment. We went out and sat down on a water trough and he said, "What do you think of your chances?" "Well," I said, "they look pretty good so far." He said, "Jim Rea told me to tell you that if you wanted two hundred dollars to put into your campaign he would furnish you the money." I said, "Wait a minute, Major." I got up from the water trough—
MR. BLEDSOE: Was Mr. Slagts there at that time? A. No, sir; I got up from the water trough and went to the door of the Wigwam and called Mr. Slagts to come—he was with the boys inside—and he came out and I said, "The Major has a proposition for us, come and hear it." So we went out and all three of us sat down on the water trough. "Now," I said, "Major, tell Mr. Slagts what you told me." He then told Mr. Slagts that Mr. Rea said, he said if Mr. Johnson wants two hundred dollars to put in his campaign, he said I will furnish it to him.
Q. Who would furnish it? A. Jim Rea.

Q. What did you say to Major Barrington in replying to that? A. I told him I did not want his money, and I did not want anything to do with Jim Rea.

Q. I will ask you if you know a young man or a man in San José by the name of MacKenzie—Johnnie MacKenzie? A. Yes.

Q. When did you form his acquaintance? A. I met him one night on the electric car between Santa Clara and San José with Mr. Kirkpatrick, who was my opponent, and Mr. MacKenzie and him were together and coming from a Republican meeting in Santa Clara which I had attended, and Mr. Kirkpatrick introduced me to Johnnie MacKenzie.

Q. Did you meet Mr. MacKenzie on election day at a precinct called Park Avenue and Orchard Street, in San José? A. Yes.

Q. Was Mr. Slagts present? A. Yes.

Q. What took place there, if anything, between Mr. MacKenzie and yourself? A. Well, there was a friend of mine came to me and told me—

[Objected to.]

Q. State what took place. A. I went into the election booth, and I told Mr. MacKenzie that if he did not quit buying votes that I would have him arrested.

Q. Had Mr. MacKenzie said anything to you previous to that? A. No, sir.

Q. Then what took place? A. He says, "Who says that I am buying votes?" I says, "I do." He says, "You're a liar." There are ladies present, and I do not like to say what I said to him.

Q. You made a reply to that, did you? A. Yes.

Q. What did Mr. MacKenzie then do? A. He went and called a policeman, and the policeman came up and wanted to know what the trouble was, and I told him, and he says, "I guess you had better both keep outside," and I did.

Q. Did you say anything to him—to the policeman—in return? A. Yes.

Q. What did you say to the policeman? A. I told him that Johnnie MacKenzie was buying votes, and I asked him to stop it.

Q. What else did you say, if anything? A. I do not exactly remember now.

Q. Did you say to the policeman that you would go if he would take Johnnie MacKenzie away? A. Yes; I said if he would put him out I would go, something like that; I do not exactly remember. In fact, I do not know what did occur.

Q. Did MacKenzie get in his buggy and go away? A. Yes.

Q. What was the last thing you said to MacKenzie when he left? A. I think I told him I would see him again about it, or I would see about it, or something of that kind—that I would attend to him.

Q. At any rate he went away with the understanding between you that the matter would be settled in the future? A. Yes, I think I said I will attend to you in the future.

Q. Do you know a young man by the name of Harry Conner? A. Yes.

Q. Where did you meet him the first time? A. I met him the first time about ten days—twelve or fifteen days, something like that, after election.

Q. Where? A. In the lumber yard.

Q. Did you have any conversation with him? A. I did.

Q. State what it was? A. He came into the lumber yard and said that he was very glad I got elected, and he came in to congratulate me, and we sat down and got to talking, and he said that Johnnie MacKenzie wanted to see me. I told him—I said, "Johnnie MacKenzie knows where I am, and if he wants to see me he can come here and see me." He went away. We talked about other matters. The next day he came back again; he said, "Johnnie MacKenzie don't want to come here and see you," he said, "It is a public place." I said, "If he don't want to come here to see me, he can come out to my house and see me, I am home every night." He said, "No, he wants you to come down to his office." I said, "Where is his office," and he said, "Down on Santa Clara Street." I said, "Whereabouts on Santa Clara Street," and he says, "It is in the Electric Improvement Company's office, do you know where that is?" I said, "I do not." "Well," he says, "are you coming to town to-night?" I said, "Yes, I believe I am." "Well," he says, "I will meet you down on the corner of Santa Clara and Market Streets at eight o'clock." I told him, "All right." At the first or second time he came in there I asked him, "Do you know what MacKenzie wishes of me?" He said, "He felt a little sore about that row you had election day, and he is afraid you will have him arrested and he wants to have a talk with you about it," then he asked me if I was coming to town that night, and I told him I was, and he says, "I will meet you on the corner of Market and Santa Clara Streets at eight o'clock." I said, "All right." So at six o'clock Mr. Slagts came through the yard with his buggy, as he generally does, or did then, going home, and I told him about it. "Well," he says, "I will go down with you." So after we had supper—after I had supper, I went down to Mr. Slagts, he lives between where I do and town, we got on a car—an electric car—and went into town, and we went down and Mr. Conner was on the corner of Market and Santa Clara Streets, waiting for us, and he said, "Come right down to the office." I said, "I don't want to go to his office." Mr. Slagts says to him, he says, "Ain't that Jim Rea's office?" "Well, no," he says, "it ain't Jim Rea's office, it is the same building." He said, "Is Jim Rea there?" "No," he says, "he ain't." I said, "You go down and tell Mr. MacKenzie to come up here and we will settle this question in two minutes." "All right," he said, "I will go," and he went and then came back and he said, "Just come right on down here, MacKenzie is right down here." We walked down Market Street to an open gate, and MacKenzie was standing by the open gate and he said, "Good evening, Mr. Johnson." I said, "Good evening, Mr. MacKenzie," and he turned right around, and he says, "Come right on in this way." I walked right along side of him and walked right in back and went into a kind of an outhouse—a kind of an old room, and when we got there he stepped through a door, like into a little office, and the door was open. There was a light inside. There was a chair, maybe two, and a lounge. He says to Mr. Slagts and Mr. Conner, he says, "Just excuse Mr. Johnson and I one moment," and he walked in and I followed him, and he shut the door. He said, "Sit down." I sat down. I said, "Mr. MacKenzie, what is it you want with me?" He says, "You know we had a little difficulty on election day, and I understand that you are thinking about having me arrested." I said, "Yes, Mr. MacKenzie, if I had got beaten I would have had you arrested. As long as I beat you," I said, "that is enough, we won't say

nothing more about it." He said, "I feel much relieved over that." I said, "That is all there is to it." Then he began to talk about the election and the different precincts. He says to me, he says, "Who is behind you in this election?" I said, "Nobody." He said, "Did you make this fight alone?" I said, "Yes, I did." He said, "Where did you get all the money you spent at Mountain View and Mayfield the day before election?" I said, "That was my own money." He said, "I want to tell you something now." He said, "You are going up to Sacramento, and I want you to look out for that big fat Bailey;" and he said something else.

Q. State what he said about Senator Bailey. A. He said, "You look out for that big fat son of a bitch, Bailey."

Q. Did he state why? A. Well, he said he was no good. He said Mr. Rea furnished him money to make his fight on, and the first time Mr. Rea went to Sacramento, and wanted a vote out of him, he put his hand up this way, and he said, "Mr. Rea, we are business men, how much is there in it," and so that ended there; I said nothing more about it, and we got up, he opened the door, and I went out, and Mr. Slagts and I went home.

Q. Look at that card marked exhibit "6," State Janitor, and state whether or not you received a card similar to that, and if so, when and where? A. Yes, I received one like that.

Q. About what time? A. I think it was about the 5th or 6th day of December, somewhere along there.

Q. How did you receive it? A. Through the mail.

Q. How many did you receive of that kind? A. Only one.

Q. Look at this card marked exhibit "5," and I will ask you whether you ever received a card like that? A. Yes, I did.

Q. When? A. I think about the same time that I received that one.

Q. About the same time that you received the white card? A. I do not know whether it was a white card or not.

Q. Marked, "Arranged by the State Janitor?" A. Yes.

Q. And also received a card marked Thomas E. Healy? A. Yes.

Q. Known as the Healy card? A. Yes.

Q. Similar to exhibit "5?" A. Yes.

Q. Did you receive that through the mail? A. Yes.

Q. At that time how many did you receive? A. One.

Q. Inclosed in an envelope? A. Yes.

Q. In the same way that you had received the one arranged by the State Janitor, marked exhibit "6?" A. Yes.

Q. Do you know a gentleman by the name of Mason? A. Yes.

Q. He is one of the attachés of the Assembly? A. Yes.

Q. Assistant Clerk? A. Yes.

Q. And was just on the witness stand? A. Yes.

Q. Did you see him in San José after you received this card? A. Yes.

Q. This card—the Thomas E. Healy card; where did you see him?

A. I saw him on the corner of Santa Clara and First Streets.

Q. When, and what date? A. I think it must have been about the 6th or 7th of December.

Q. Did you have any conversation with him there? A. I did, yes.

Q. Did you or did you not give him a card similar to this? A. Yes, I did.

Q. Was that the only card—the only Thomas E. Healy card you had in your possession at that time? A. Yes, that is the only one.

Q. And the one that you received through the mail? A. Yes.

MR. RICHARDS: That was on what date? A. The 6th or 7th, as near as I can remember.

MR. McPIKE: What had you gone to that corner for at that time?

A. I had gone to the corner to meet Mr. Barrington.

Q. Major Barrington? A. Yes.

Q. Did you see Major Barrington there? A. No, sir.

Q. Did you see him that morning? A. Yes.

Q. Previous to that time, Mr. Johnson, did you owe Mr. Barrington any money? A. Yes.

Q. How much? A. Eight dollars.

Q. Did you receive a note from him requesting you to call at his office? A. Yes.

Q. About what date was that? A. I think that was about two days before or afterwards; I am not certain which.

Q. Before what? A. Before the conversation between Mr. Mason and me; I think about two days before.

Q. About two days before meeting Mr. Mason, you received a note from Major Barrington asking you to call at his office? A. Yes.

Q. Did you go? A. Yes.

Q. Did you see Major Barrington in his office? A. Yes.

MR. BLEDSOE: When was that? A. I think that was probably about the 5th of December.

MR. RICHARDS: You mean you called on him about the 5th? A. Yes.

MR. McPIKE: What did the Major say to you, if anything, about the note he had written to you? A. When I went there he was in his office. I went in and shook hands with him. He said, "Sit down," and I sat down. "Well," he says, "how are you fixed for money?" I said, "I haven't got any, just now, Major." "Well," he says, "I am pretty hard pushed on my paper, and I would like to have what you owe me, if I can get it." I said, "I haven't it now, but I will have it in a day or two, and give it to you." He said, "Why don't you borrow some money?" I said, "I am not in the habit of borrowing money, and, if I were, I do not know where to go to get it." He said, "That's easy; if you want any money, I can get it for you." He said, "How much do you want?" I said, "I do not know." I said, "There are two or three other little bills out, besides yours, I would like to pay." He said, "How would a hundred dollars do you?" I said, "A hundred dollars would just put me on my feet; I can pay off everything I owe, and I would like to have it." He said, "If you draw up your note, and get Mr. Slagts to go security, I will take it down to Mr. Friant, that is the Union Bank, and get the money for you." "Well," I says, "all right." So he drew up the note, and I signed it, and indorsed it on the back; he told me to. I took the note then, and went and got Mr. Slagts to put his name on the back of it; I then took the note down to Mr. Friant myself. I was acquainted with him; he was out in the campaign; he was a candidate for Treasurer, and I explained to him. He says, "You come around in the morning, and I will let you have the money." I says, "All right." The next day I was busy in the yard, and it was impossible to get away, and I sent Mr. Slagts down, and he came back and told me that Mr. Friant said that Mr. Johnson, I believe, the President, or something, objected. I told him, "That is

all right, Mr. Slagts, you need a note." At noon I took the note over to the Major's office, and told him about it. He says, "That's all right." He said, "Give me the note, and I will get you the money." I gave him the note. He says, "You come around here to-morrow morning at ten o'clock, and I will have the money for you." I went around the next morning; I didn't work the next day, and I went around there the next morning about ten o'clock. He was busy writing at his desk. He said, "Sit down a little while, I am busy just now." I think I sat there about half or three quarters of an hour. He got up and put on his hat and coat, and he said, "Come with me and I will give you the money." I got up; he got up and went out, and I followed him, and we went down what we call Lightstone Alley, and we crossed over to Santa Clara Street, and went down Santa Clara Street until we came to Hicks & Foster's real estate office. Mr. Barrington went in, and I went in with him. We went in through behind a long building, and went into the back office—a big, large office—and there was a man there that I understand was Mr. Edwards. At that time I did not know him. He said to Mr. Edwards, "Where is the Prince of California?"

MR. BLEDSOE: Is that the office of the Electric Improvement Company? A. Yes, that is to the best of my knowledge and belief. He says, "Where is the Prince of California?" and he said he was there in his office. He opened a little railing and we walked through inside and he opened the door and walked in, and there was a gentleman sitting there, and he introduced me to Mr. Rea. That was the first time I ever saw him to know him. Mr. Rea got up and shook hands and said, "Sit down," and I sat down, and Mr. Barrington sat down, and he sat down. Mr. Barrington said, "Mr. Johnson wants to get \$100 that I was telling you about. "Yes, yes," he said, "that is all right, Major." He said, "Here is a note indorsed by Mr. Slagts and if necessary I will indorse it." Mr. Rea says, "That's all right," and took the note and opened it and read it carefully. After he had done that he took it and folded it this way in this shape [the witness here illustrated with a piece of paper] and he held it in his fingers like that, and then he says, "You have got there all right?" I says, "Yes." He said, "You kind of beat us this time, didn't you?" I said, "I don't know about that, it is a kind of a mixed question, yet." "Well," he says, "I do not know; how do you think the Legislature stands?" I said, "I do not know exactly," but I says, "I got a little pamphlet," I said, "I gave it to Mr. Barrington," and I said "I guess you have got it now, haven't you, Major?" and he says, "Yes," and pulled it out of his pocket and handed it to Mr. Rea.

MR. BLEDSOE: What do you mean by that? A card? A. Yes; one of those.

Q. One of those Healy cards? A. No, sir.

Q. Which card was it you gave him? A. One of the Janitor cards.

Q. Similar to exhibit "6"? A. Yes, one of those Janitor cards. [The witness was here shown exhibit "6" and said it was one of those.]

MR. BLEDSOE: Did it have any marks on it when you gave it to Mr. Barrington? A. No, sir; not that I know of—no marks that I know of.

MR. MCPIKE: Was it the same card that you gave Mr. Barrington at the time you had received through the mail? A. Yes.

Q. And known as the Janitor card? A. Yes.

Q. Had you put any marks on it yourself? A. No, sir.

Q. Had you changed it in any way? A. No, sir.

Q. Had you changed anything on the card up to the time you gave it to Major Barrington which would change it in any way? A. No, sir.

MR. BLEDSOE: Is that the only card you ever gave Mr. Barrington? A. No, sir.

MR. MCPIKE: Now, what took place after Major Barrington handed Mr. Rea this card? A. Well, about that time Mr. Edwards came into the room and talked to Mr. Rea and Mr. Barrington, and I do not remember positively whether he gave me an introduction to him or not; that I do not remember. Then they talked awhile.

Q. Who talked awhile? A. Mr. Rea and Mr. Barrington, and he looked over the card and didn't say much about it. Then I got up. I had been there, I guess, at least ten minutes. I got up and I said, "Mr. Barrington, I guess we had better be going." "Yes, yes," he said. "Mr. Rea, if you will let Mr. Johnson have this money he will stand with you all through this Legislature, and I guess he is willing to put it in writing."

Q. What did you say or do then? A. I got right up and reached for the note. Mr. Rea still had the note in his fingers. I took the note. I said, "Gentlemen, that will do me." Mr. Rea got up and said, "Mr. Barrington, I want to see you," and they went outside, and while outside I heard Mr. Barrington say, in a loud, mad tone—he said, "Damn it, I done the best I could."

Q. What did Mr. Barrington say then? A. They then came back in the room and Mr. Rea said, "Good day, Mr. Johnson," and shook hands with me, and said, "What are you doing?" I said, "I am not doing much of anything during this week." He said, "You have never been up to Sacramento?" I said, "No, sir." He said, "I have; I know all the ropes." He said, "Come around here Saturday and I will give you some good advice. They will try to play all kind of schemes on you up there." I said, "All right."

Q. After he told you that he knew all the ropes he asked you to call around on Saturday next, what took place? A. I asked him about what time; he said about one o'clock. He said, "I am going to San Francisco to-morrow and I will be back here Saturday."

Q. What took place then? A. Mr. Barrington and I walked out.

Q. When did you give the Major this card, which you say is marked Janitor's card? A. I think it must be about the 5th of December—the 5th or 6th, somewhere along there.

Q. How did you come to give it to him? A. I was in his office and we got to talking about the campaign and how we beat the Republicans, and one thing and another, and how the Legislature stood, and I showed him the card, and he asked me if I would let him have it.

Q. At the time that you received this card, or gave this card to Major Barrington, did you have a card called the Thomas E. Healy card in your possession? A. No, sir; I just gave it to Mr. Mason, I think, or I think I gave it to Mr. Mason before that.

Q. Did you go back the following Saturday to see Mr. Rea according to appointment? A. I did, yes.

Q. Which way did you go in his office? A. I went in through Mr. Hicks & Foster's office the same way me and Barrington went.

Q. The front way? A. Yes.

Q. On the evening that Mr. Conner made the appointment with you to meet Mr. MacKenzie and before you had met Mr. MacKenzie, did you say to Mr. Conner that you did not want to go in the front way because some of your constituents might see you going in that way? A. No, sir; I never did.

Q. Did you say to Mr. Conner at any time or any place that you did not want to go to Mr. Rea's office in the daytime? A. No, sir; I never did.

Q. Did not want to be seen going in the front way, because some of some of your constituents might see you? A. No, sir; I never did.

Q. When you went to Mr. Rea's office on these two occasions or on any occasion, if you were ever there, did you go in open and above board? A. Yes, I did.

Q. What did you do with the promissory note which you took from Mr. Rea's hands? A. I gave it to Mr. Slagts and Mr. Slagts tore it up.

Q. Where and when? A. Right in front of the Commercial Bank, on Santa Clara Street.

Q. After you had failed to obtain this money from Mr. Friant and from Rea, or after Major Barrington had failed to get it for you in that way, did you make further efforts to obtain this hundred dollars? A. Yes.

Q. Where? A. I went to see Mr. Ryland—Johnnie Ryland—and I told him I wanted to get \$100. He says "Come with me I will take you down to the Commercial Bank." He took me down to the Commercial Bank and introduced me to somebody, I do not know who it was now; I think it was the Secretary, or Manager or something, and told him what I wanted; he asked me if I had any security; I told him I could give Mr. Slagts; he said "All right, bring Mr. Slagts down here, I will draw you up the note and give you the money." I went and got Slagts and went down to the bank, and he drew up the note, and he signed it, and he gave me the money, and after I got the money we went outside, and I gave Mr. Slagts the other note, and he tore it up.

Q. You obtained that money on a promissory note, which was indorsed by Mr. Slagts and signed by you? A. Yes.

Q. You received \$100 on the note? A. Yes.

Q. Did you ever make any arrangement with Mr. Conner to see Mr. MacKenzie to arrange a meeting between you and Mr. Rea? A. No, sir.

Q. You heard the testimony of Mr. Conner in that respect? A. Yes.

Q. Was it true or untrue? A. That is untrue.

Q. Did you, on the evening that you met Mr. MacKenzie in the back room or in a room at the time that Mr. Conner and Mr. Slagts was outside, say to Mr. MacKenzie that you wanted to see Mr. Rea, or to arrange a meeting with Mr. Rea for you, and that you were out for the stuff? A. No, sir; I never did.

Q. Did you ever use the expression with reference to yourself to any person after your election, that you were out for the stuff? A. Not that I remember of I never did. I never did.

Q. Be positive about that? A. Well, I am positive.

Q. Did you say that to Mr. Conner? A. No, sir.

Q. Did you say that to Mr. MacKenzie? A. No, sir.

Q. Did you say that to Major Barrington? A. No, sir.

Q. Did you say you were out for money? A. No, sir.

Q. Did you intimate or state anything to any one of those three gentlemen that you were looking for a consideration to vote in any way here in the Legislature? A. No, sir; I never did.

Q. Did you state to any one of them that you would give your influence or your vote for money, or for any consideration whatsoever? A. No, sir; I never did.

Q. Do you know Mr. Brownlie—Assemblyman Brownlie? A. Yes.

Q. When is the first time that you ever saw him? A. The first time I ever saw Mr. Brownlie, I think it must be on the 15th day of December last, about.

Q. Where? A. At my home, in Willow Glen.

Q. How did you happen to meet him then? A. He came to my house about eight o'clock in the morning.

Q. Had you heard that he was there previous to that? A. Yes, my wife told me when I went home that there was an Assemblyman there to see me two or three times.

Q. Did she tell you what his name was? A. I do not think she did.

Q. Did she say that he would be there to see you at any future time? A. Yes, she said he would be there at eight o'clock to-morrow morning, and he wants you to be sure and wait here until he comes.

Q. What took place between you and Mr. Brownlie when he arrived? A. When Mr. Brownlie came I had just finished breakfast. He knocked at the door. I went and opened the door and he introduced himself. He said his name was Brownlie and he was an Assemblyman from San Francisco. I invited him in. He came in and sat down and I believe I asked him if he was a Democrat or Republican, and he said he was a Democrat. He said, "I see you are a Democrat." I said, "Yes." "Well," he says, "how is the United States Senator fight up here?" "Well," I says, "I am for Mr. White." I said, "I suppose I am compelled to vote for him," something like that. He reached in his pocket and pulled out a card and took it in his hand and took a pencil and put a mark on it.

Q. I will hand you this card marked exhibit "3," and ask you if that is the card. I will ask you if that card is similar to it? A. Yes, it is one of Mr. Healy's cards. I know that.

Q. Proceed now and state what Mr. Brownlie did and said. A. He took a pencil and made a mark on it. I saw that it was my name that he marked on it. He shut the card up like that, and put it back in his pocket. We then got to talking about the Sergeant-at-Arms. He took the card out of his pocket again and told me about Mr. Healy being a candidate for Sergeant-at-Arms, and wanted to know if I had any preference for any one. I said, "No, I receive a good many letters, but there are so many of them that I never paid any attention to them." Then I asked him about the San Francisco Delegation, I said, says I, "There is some trouble down there amongst some of your men there." He said "Yes, there are two or three." I asked him then how it stood now. "How does it stand now?" He said, "I think the Democrats are going to have a majority." I had a paper there that I took from the "Examiner," I think it was—some paper that had a list of the names of the Assembly. He said, "Have you got any of these cards?" I said "No, I had some but I gave them away," and he said "You can have this one." So he gave it to me. And we talked awhile, and then he asked me how I stood on the Speaker fight. I said, "I do not know." I

said, "Mr. Gould has been here." I said, "I have seen him." I said, "The others I do not know," and then we talked about one thing and another I do not exactly remember what it was now, and he went away.

Q. You retained the card? A. Yes.

Q. Did you see any marks on the card? A. Yes, I did.

Q. Is this card marked similar to that one? A. Yes, I think it is.

Q. What did you do with the card? A. I kept it in my pocket quite awhile. Had it for reference quite a little while and then gave it to Major Barrington.

Q. You gave it to Major Barrington? A. Yes.

Q. What day did you give it to Major Barrington? A. I gave it to him on the 26th day of December.

Q. How did you happen to give him this card? A. I was in his office, and we got to talking about the Legislature and one thing and another, and he asked me if I had any more of those cards. I said I had one. He asked me if I would give it to him. I said yes.

Q. Now, Mr. Johnson, are those the only cards you received from any source from the time that you were elected Assemblyman until you came up to Sacramento? A. Yes.

Q. The first card that you received was the Janitor card, marked exhibit "6"? A. Well, I received that one and the Healy card very close together; I do not remember which one I got first.

Q. But you received the Janitor card and the Healy card, marked exhibit "5," or one similar to it, and then afterwards one marked exhibit "3," Thomas E. Healy card, from Mr. Brownlie, at your house? A. Yes.

Q. Which card you gave to Major Barrington on the 26th of December, 1892? A. Yes.

Q. When did you next see that card that you gave to Major Barrington? A. I saw it in the committee room.

Q. Did you, in Mr. Rea's presence and Major Barrington's presence, on or about the 8th day of December, 1892, put any mark on any card? A. No, sir; I never did.

Q. Did you deliver a marked card to Mr. Rea on that occasion? A. No, sir.

Q. Or on any occasion? A. No, sir.

Q. Did you ever tell Major Barrington at any time to see Mr. Rea, and see if he could not get the money from him, or ask him to arrange a meeting between you and Mr. Rea; that you were willing to stand in with him or with the Railroad Commissioners? A. No, sir; I never did.

Q. I will read you a question on page eight, the answer of Mr. Rea, and ask you if this took place: "Well, I invited them into the private office, and Major Barrington introduced me to Mr. Johnson. As near as I can recollect, he said: 'Mr. Rea, this is Assemblyman Johnson. He wants to borrow \$100, and he is friendly to your Commission, and will sign a paper to that effect?'" A. No, sir.

Q. Did Major Barrington make that statement? A. No, sir.

Q. Now, pay attention: Did Major Barrington in your presence, and in the presence of Mr. Rea, introduce you and say: "This is Assemblyman Johnson. He wants to borrow \$100. He is friendly to your Commission, and will sign a paper to that effect?" A. No, sir.

Q. What did he say? A. He introduced me to Mr. Rea, and said, "This is Assemblyman Johnson, about whom I was telling you; and he wants to borrow \$100, and I have got a note here."

Q. Did Mr. Rea then say, "Be seated, gentlemen," and Major Barrington say: "Mr. Rea, here is Mr. Johnson's security. I have drawn the note up to make it negotiable by making it payable to Mr. Johnson. It is indorsed by Mr. Slagts?" Did that take place? A. No, sir.

Q. What took place in reference to that? A. When we went in he introduced me to Mr. Rea, and we all three sat down, and then he says, "This is Mr. Johnson; he wants to get a hundred dollars, and I have got a note here indorsed by Mr. Slagts, and that is what I was telling you about; something like that, and I have got the note here," and he handed the note to Mr. Rea. Mr. Rea said, "That's all right." He handed the note to Rea and Rea opened the note and read it carefully, and then folded it up in his fingers, and then they went to talking about something else. After they had been talking a little while Mr. Rea said, "Well, you beat us this time," or "you have got the best of us this time," or something like that.

Q. Did Mr. Rea say to the Major in your presence, that is, to Major Barrington on that occasion in his office in San José, "Major, I don't care anything about the note or its indorsement. Mr. Johnson and I understand each other perfectly well?" A. No, sir; he never did.

Q. Did Mr. Rea say to you, "Mr. Johnson, Mr. MacKenzie spoke to me about you, and what you want, and what you want in cold-blooded fact, is a hundred dollars?" A. No, sir; he did not.

Q. Did he then say to you, "Mr. Johnson, you signed a contract with the Traffic Association?" A. No, sir; he did not.

Q. He did not say that? A. No, sir.

Q. "Agreeing to stand by them, and how do you account for the fact that you are now willing to sustain the Commission?" "Well," you said, "that was during the campaign, and there was a number of votes out in the Willows that I couldn't secure without signing that contract, and I signed it, but it does not cut any figure now, as long as I have sense to know that I will never be elected again, and there are a number of others in the same fix?" A. No, sir; there was no such conversation occurred whatever.

Q. Did Mr. Rea then say to you, "Will these people vote to sustain the Commissioners, like yourself?" A. No, sir; he did not.

Q. Did you reply to that, "Yes, they will?" A. No, sir.

Q. Did Mr. Rea say to you then and there, "How do they stand on United States Senator?" A. No, sir; he did not.

Q. Did you reply, "We haven't yet made up our minds; we have agreed to go to Sacramento, and will make up our minds then to stand together?" A. No, sir.

Q. Did Mr. Rea then and there say to you, "Are these people out for the money, like yourself?" A. No, sir; he did not—no such conversation.

Q. Did you reply to him, or any words to that effect, "They are?" A. No, sir.

Q. Did Mr. Rea then and there say to you, "Could they be had to vote for a Republican United States Senator?" and did you reply, "Well, it is pretty hard for them to leave their party; I think so. One of them I know will, if it is made a sufficient object?" A. No, sir; I never did.

Q. Did Mr. Rea then say to you, "Mr. Johnson, would you have any objection to writing their names down, and the district they come from, that I cannot make any mistakes as to their names?" and then did you say, "I have none; I have no objection?" A. No, sir.

Q. Did you then feel in your pockets for paper and pencil and say, "I might know the districts, or the number of districts, I mean. I have a card—" and did you then say, "Major, I handed it to you this morning?" A. No, sir.

Q. Did such conversation take place? A. No, sir.

Q. Or any part of it? A. No, sir.

Q. Did Major Barrington then go into his pocketbook and pull out this card, and upon having such conversation with you also take out a pencil and hand it to you? A. No, sir.

Q. Did Mr. Rea then say to you, "Mr. Johnson, you be very careful; don't mark a name on that card that will not vote for United States Senator if paid enough?" A. No, sir.

Q. Did you then in reply to that say, "I cannot guarantee but one?" A. No, sir; I did not.

Q. Did you then, continuing, say that "I think he is a shopmate of mine—worked in the shop with me," and also mentioned several, and one a schoolmate, and where you had known him? A. No, sir.

Q. Did you then say, "I cannot guarantee but one?" A. No, sir.

Q. Did he then say, "Mark them," and then did you take the Major's pencil and mark a name? A. No, sir.

Q. Did you borrow a pencil from Major Barrington to mark a card with? A. No, sir; I did not.

Q. Did you just mark once opposite a name and then start to hand the card back to Mr. Rea and say, "I have marked that too far from the name; I had better take it again and mark it up to the name?" A. No, sir.

Q. Then did you mark from the name back, and arrange two marks opposite the first name, and hand it to Mr. Rea, and the pencil to Major Barrington? A. No, sir; I did not.

Q. Did Mr. Rea then say, "These parties you have mentioned are out for money on every proposition, except United States Senator, and did you then say, "Yes?" A. No, sir; I did not.

Q. Did Mr. Rea use such language as that to you? A. No, sir.

Q. Did Mr. Rea then say this, and then hand his pencil to you, and say, "You mark those names?" A. No, sir.

Q. Did Mr. Rea then say, "Do not mark any names that you are not positive of," and then did you proceed and mark your own name? A. No, sir.

Q. Did you mark one there for Republican United States Senator? A. No, sir; I did not.

Q. Did you have any conversation or talk there with Mr. Rea about the United States Senator at all? A. No, sir.

Q. Did you say anything to Mr. Rea, or did Mr. Rea say anything to you about a Republican United States Senator? A. No, sir; he did not.

Q. When Mr. Rea had returned the card to you, had you marked but one name? A. No, sir.

Q. Did you make any marks on the card? A. No, sir; I did not.

Q. Did Mr. Rea say to you then and there that you could mark these names with one mark; that is, with reference to anything at all, and the other with two, so that he could distinguish. A. No, sir.

Q. Distinguish a United States Senator? A. No, sir.

Q. Were there any marks made to indicate that the United States Senator was to be marked with two marks, and the other with one

mark? A. No, sir; there was nothing of that kind at all; there was no marks or anything said about that at all.

Q. You heard Mr. Rea's testimony, with reference to the conversation that took place there? A. Yes.

Q. And with reference to your putting marks on this card, or any card? A. Yes.

Q. Are Mr. Rea's remarks in regard to that true, or untrue? A. No, sir; they were untrue in every particular.

Q. Did Mr. Rea there ask you who your candidate was? A. No, sir; he did not.

Q. Did he ask you who you were for for United States Senator? A. No, sir; he did not.

Q. Was there any talk about United States Senator? A. No, sir; there was not.

Q. Was there any talk there between you and Mr. Rea about the Railroad Commissioners? A. No, sir.

Q. Did Mr. Rea speak of Mr. Leeds in there at all? A. No, sir.

Q. Did Mr. Rea or Mr. Barrington, either one of them, mention the Traffic Association? A. No, sir; neither one of them.

Q. Did Mr. Rea say anything to you about having signed the Traffic Association pledge? A. No, sir; not a word.

Q. Did you mention Mr. Foote's name or Senator White's name at any time during that conversation? A. No, sir.

Q. Did Mr. Rea or Mr. Barrington? A. No, sir.

Q. Did Mr. Rea say to you, "Mr. Johnson, so you are willing to sign a contract, are you, signifying your willingness to stand by the Commission?" A. No, sir; he did not; he did not dare to.

Q. Did you, referring to that, say, "Well, I would not like to sign a contract, but I will pledge my word and honor I will stand by the Commission?" A. No, sir.

Q. Then did Mr. Rea say to you, "I would like to explain to you this railroad situation?" A. No, sir.

Q. Did he proceed and explain the railroad situation to you then from any standpoint? A. No, sir.

Q. Or from the standpoint of the Railroad Commissioners? A. No, sir.

Q. Or at all? A. No, sir.

Q. Did you then and there, or at any other place, either offer to vote to sustain the Railroad Commissioners, or any one of the Railroad Commissioners, or particularly Mr. Rea, by your vote, for a consideration? A. No, sir; never.

Q. Or for anything? A. No, sir.

Q. Did you ever have any conversation in your life with Mr. Rea about the Railroad Commissioners, or any Railroad Commissioner, or anything pertaining to the State Legislature? A. No, sir; not a word. I never met Mr. Rea, except the one time, in my life.

Q. Did you six or eight times visit Mr. Rea's office? A. No, sir.

Q. How many times in your life were you ever in Mr. Rea's office? A. Twice.

Q. That is twice to your knowledge? A. Yes.

Q. Were you there on one occasion with Mr. MacKenzie? A. No, sir.

Q. Whose office did you go to the evening you and MacKenzie were together? A. Well, that was the same office, but I supposed at that time that it was MacKenzie's office.

- Q. Then you were in the office actually three times? A. Yes.
- Q. How long did you remain in the office on the Saturday you went there? A. I remained there between five and ten minutes.
- Q. Did you read a paper while you were there? A. Yes, the "Chronicle." Mr. Edwards showed me to the office. He said, "Sit down, Mr. Rea will be here in a little while, and there is a paper to read."
- Q. Did you meet Bethell? A. No, sir.
- Q. Did you see that young man in the office? A. No, sir.
- Q. Did you ever see Archie Tisdall in the office? A. No, sir; not to my knowledge.
- Q. Did you ever go there without your shoes blackened? A. No, sir; I do not think I ever did.
- Q. Did you see Mr. Tisdall looking at your shoes? A. No, sir; not that I know of I did not.
- Q. Did you remain in Mr. Rea's office from a half to three quarters of an hour on that occasion? A. No, sir; I did not.
- Q. That is on the 8th of December, 1892? A. No, sir.
- Q. How long were you there when you and Major Barrington went together? A. I think we probably were there fifteen minutes, may be not over ten or twelve.
- Q. For what purpose did you go to Rea's office on that occasion? A. I went with Mr. Barrington to get a hundred dollars.
- Q. Did you know you were going to Rea's office with him for any other purpose? A. No, sir; or I would not have gone.
- Q. Why did you go there Saturday afterwards to meet Rea? A. I knew Rea's reputation, and that he knew all about the ins and outs of the Legislature, and I thought he might give me some good advice; or, at least, if it wasn't good advice I would find out something I would like to know.
- Q. What did you want to know? A. I wanted to know a good many things.
- Q. Did you think Mr. Rea was qualified to tell you a good many things about the Legislature? A. Yes, I did.
- Q. Mr. Johnson, you introduced a bill in the Legislature known as Bill 341—Assembly Bill 341? A. Yes.
- Q. When and where was that bill prepared, if you know? A. It was prepared in San José.
- Q. Was it given to you when you came up here? A. No, sir.
- Q. How long before you left San José was that bill prepared? A. Before I came to the Legislature?
- Q. Yes? A. It was not prepared until after I was here and went home.
- Q. Did you prepare that bill as a bell ringer? A. No, sir.
- Q. Trying to ring up Mr. Rea for a hundred dollars? A. No, sir.
- Q. You had no bell-ringing bill before the Legislature, then? A. No, sir; I put that bill in before the Legislature with the intention that if the Legislature did not remove the Commissioners to pass that bill, and I have that intention still.
- Q. You understood that if you passed the bill that it could not affect Mr. Rea's salary for the present term? A. Yes.
- Q. And could not affect the Railroad Commissioners? A. Yes; I was advised by the attorneys that it would not.
- Q. Did you tell Major Barrington at any time in San José, or did you

- ask Major Barrington what his relations were with Mr. Rea, or what Major Barrington's relationship was with Mr. Rea? A. No, sir; I did not.
- Q. At any time or place? A. No, sir.
- Q. Did you tell Major Barrington, after he had told you that he knew Mr. Rea socially pretty well, that you must have this money; that you needed it to pay off some debts that you had incurred in the campaign, and asked Mr. Barrington if he thought that Mr. Rea would discount the note? A. No, sir; I never did.
- Q. Did Major Barrington then say, "I do not know, I will see; but Mr. Rea is the President of the Railroad Commissioners, and may expect something from you in return for the services," or something of that kind? A. No, sir; never.
- Q. Did Major Barrington say to you, "The matter of this Commission will probably come up before the Legislature," and did you say, "All right; will you see Mr. Rea?" A. No, sir; I did not.
- Q. Did you have any conversation with him—with Major Barrington—leading him to suppose that you were not antagonistic with the Railroad Commission? A. No, sir; I never did.
- Q. Did Major Barrington report to you that he had seen Mr. Rea, and that he had told him that you wished to borrow money on a note and that you were all right with the boys—with the Commission? A. No, sir; never.
- Q. Did Major Barrington come and report to you that he had never seen Mr. Rea? A. No, sir.
- Q. When you went to Mr. Rea's office with Major Barrington did Major Barrington say "This is Assemblyman-elect Johnson. Mr. Johnson wishes to borrow one hundred dollars on a note, and he will give you a paper that he will stand by the Commission?" A. No, sir; he did not.
- Q. With reference to the hundred dollars, after Mr. Rea had returned you the note or you had taken the note, did Mr. Rea say "I am pushed myself at present for money. I have been paying my taxes and I am compelled to borrow money myself?" A. No, sir; there was not a word said about it. After the Major said "He will stand by the Commission I suppose he will put it in writing," I took the note, and that was the end of it. There was nothing more said about the matter.
- Q. You have heard Major Barrington's testimony as to what took place between you, and Rea, and himself in Mr. Rea's office in San José on or about the 8th of December? A. Yes.
- Q. Were those conversations as reported by Major Barrington true or false? A. They were most all false.
- Q. Were they all false with reference to your being willing to stand by the Commission, or to stand by any one of the Commissioners, or to give your vote in the interest of the Railroad Commissioners or Commissioner? A. They were false.
- Q. You make a sweeping statement that all the testimony of Major Barrington with you reference to your going there for the purpose of obtaining money from Mr. Rea in consideration of your vote is false? A. Yes.
- Q. You heard the testimony of Mr. Edwards? A. Yes.
- Q. With reference to a conversation which he says he overheard taking place between you, and Mr. Rea, and Major Barrington? A. Yes.
- Q. Is that testimony true or false? A. It was false. The only

truth that he swore to was that he passed through the room; then he didn't swear to the truth, because he stopped in the room.

Q. He did stop in the room? A. Yes, and he talked with Mr. Rea and Mr. Barrington; I do not remember that I said anything to him or he to me.

Q. Did you ever go to Mr. Rea's office and ask Mr. Tisdall or Mr. Bethell to go out and search for Mr. Rea? A. No, sir; I never did.

Q. Did you ever go to Mr. Rea's office in company with Mr. MacKenzie, except on the occasion you have mentioned this evening? A. That is all.

Q. And by that I refer to the evening when you went and met MacKenzie at the gate? A. At the back way.

Q. That is the only time you were ever there with MacKenzie? A. That is the only time I ever had any conversation with MacKenzie in my life.

Q. You heard Mr. MacKenzie's testimony with reference to conversation that took place between you and him on the evening of your visit to his office in company with Mr. Slagts? A. Yes.

Q. And what he said about your being out for the stuff and that you were not coming up to Sacramento for your health. Was that conversation true or false? A. It was false.

Q. It did not take place? A. No, sir.

Q. Did you converse with Mr. MacKenzie on that evening upon any other subject than the subject of the arrest of himself, and your trouble with him? A. That is all, and Mr. Bailey.

Q. That is all except about Mr. Bailey? A. Yes.

Q. How many times, if you know, did this young man Conner come to see you after you were elected? A. I should judge it was five or six times I saw him.

Q. What did he ask you when you would see him? A. Well, he always wanted me to go and see MacKenzie.

Q. Did he ever say to you to go and see Rea? A. No, sir; never mentioned Rea's name.

Q. Did you ever ask him about Rea? A. No, sir.

Q. He came to see you about five or six times? A. Yes.

Q. Did he ever come to see you before you were elected? A. No, sir.

Q. Did you ever see him? A. No, sir.

Q. Did you ever ask him to make any arrangements by which you could meet Mr. Rea through Mr. MacKenzie, or through any other person? A. No, sir.

Q. Did Mr. Conner tell you upon any occasion that if you would go and see MacKenzie, that MacKenzie was the private secretary of Mr. Rea and anything that you might say to Mr. MacKenzie was just the same as if you stated it to Mr. Rea? A. No, sir; I never knew what Conner's name was until I came to Sacramento.

Q. You did not know what Conner's name was until you got to Sacramento? A. No, sir; when I was given a list of witnesses I couldn't tell who Conner was by the name.

Q. Were you ever informed by the men employed by Mr. Meserve that Conner was there looking for you? A. Yes.

Q. How did they designate him? A. They called him "the blacksmith."

Q. Did you understand from "the blacksmith" it was this young man? A. Yes.

Q. You did not know his name until he came here? A. Before he came here I was getting up a list of my witnesses, and I went to Slagts and asked him what his name was.

Q. For the purpose of subpoenaing Conner as a witness for you? A. Yes.

MR. BLEDSOE: Did you not know Conner's name when you went to MacKenzie's office? A. No, sir; I did not.

MR. MCPRIKE: Did you not ask in my presence, of Slagts, here in Sacramento, when the case was being prepared for you, what Conner's name was, so you could have him subpoenaed as a witness for you? A. Yes, I did.

Q. And is that the first time you ever knew the name of Conner? A. No; I think at that time I had heard his name, but I had forgotten what his name was. I think I heard it at that time.

MR. BLEDSOE: Is that the same man that went with you and Slagts down to MacKenzie's office? A. Yes.

MR. MCPRIKE: At that time you asked Mr. Slagts for his name, intending to have him subpoenaed here as a witness in your behalf? A. I did, yes.

Q. Did you ever have any trouble with Major Barrington? A. I did on one occasion, yes.

Q. Where? A. In the Willow Glen Club.

Q. About what date? A. I think it was about four weeks before election.

Q. What was it about? A. Well, he was making a speech one night and he began to abuse the People's party and calling them cranks, and I stopped him.

Q. You stopped him? A. Yes, I told him that they had as good a right to their opinion as anybody had, and it was out of place to abuse anybody, and I would not stand it, and he left the stage.

Q. Did you ever refer to that matter again? A. Yes.

Q. When? A. I think about a week after he came to the lumber yard and wanted to know if I was going to hold a meet. I told him I was. He wanted to know if he could come out there. I said, "Certainly, Major, if you behave yourself you can come," and he came. I want to make one little correction in my testimony, so there will be no mistake. I said that I told Mr. Brownlie that I had seen Mr. Gould. Now, it might have been possible that I had seen him or heard of him. Mr. Gould has a great many friends in San José and there was a great deal of talk about him for Speaker, and I think and believe at this time that I did see him.

[The witness was here withdrawn.]

C. C. DUHAIN.

Recalled.

MR. MCPRIKE: The cards which you sent out the first and which you say you mailed to each member of the Legislature were all of one color? A. Yes.

Q. All white? A. Yes. That is the second card. The other one is the first.

[The committee here adjourned until to-morrow evening at seven o'clock.]

FRIDAY, February 17, 1893.

REBUTTAL.

The following witnesses were called in rebuttal out of order by consent of and arrangement between counsel:

O. H. BARNHART.

Called and sworn, testified as follows:

MR. RICHARDS: Your name is O. H. Barnhart? A. Yes.

Q. Where do you live? A. In San José, Santa Clara County.

Q. How long have you resided there? A. Six years.

Q. What is your business? A. I am Vice-President and Manager of the Western Granite and Marble Company.

Q. How long have you been Vice-President and Manager of the Western Granite and Marble Company? A. I have been Manager about two years. I have been Vice-President and Manager for one.

Q. Do you know H. J. Edwards? A. I do, sir.

Q. How long have you known Mr. Edwards? A. I think about four years.

Q. Do you know the general reputation of H. J. Edwards in the community for truth, honesty, and integrity? A. I do, sir.

Q. What is that reputation? A. Good.

Q. Do you know John D. MacKenzie? A. Yes.

Q. How long have you known Mr. MacKenzie? A. I suppose, about two years.

Q. Do you know the general reputation of John D. MacKenzie there in the community for truth, honesty, and integrity? A. Yes.

Q. What is that reputation? A. Good.

Cross-Examination.

MR. McPIKE: You say you are the Manager of the Western Granite and Marble Company? A. Yes.

Q. That company has, or until lately has been, engaged in erecting a building known as the Hall of Records? A. Yes.

Q. And is now? A. Yes.

Q. You were a candidate for Mayor in San José a short time ago on the Republican ticket? A. Yes.

Q. You ran against Mayor H. E. Schilling? A. Yes.

Q. You were indorsed by the United Liquor Dealers' Association? A. Not that I know of.

Q. Don't you know as a fact that you were indorsed by the United Liquor Dealers' Association and recommended by them? A. I do not, sir.

Q. You swear to that positively? A. Yes.

Q. You are a member of the Sainte Claire Club, of which Mr. Rea and Mr. Edwards, and Mr. Shortridge are members? A. I am.

Q. You are a member of the Republican State Central Committee? A. Yes.

Q. Do you say the building of the Hall of Records is now proceeding? A. Yes.

Q. Were not your company stopped in the building of that building, because it was not being erected according to contract? A. No, sir.

Q. You were stopped, at any rate, were you? A. No, sir.

Q. Not at all? A. Not at all, sir; not a minute.

Q. Who is the Superintendent now? A. A new Superintendent; I do not know what his name is, just at this minute. Mr. Lowery is the present Superintendent. Mr. McMillan was.

Q. Mr. McMillan conducted it under your contract for awhile? A. Yes; until the 1st of this month.

Q. And Mr. Lowery is the present Superintendent? A. Yes.

Q. Didn't Mr. Lowery stop the work—stop the proceedings under your contract? A. No, sir. Mr. Lowery did change a man who had a contract for putting in the concrete on the floor, and he changed that over to a different material from what he was using; but he never stopped the work.

Q. Your contract is with the Board of Supervisors? A. Yes.

Q. Who was the Manager of the Western Granite Company at the time that contract was awarded? A. I was, sir.

Q. Has Mr. Edwards any stock in the Western Granite and Marble Company? A. No, sir.

Q. Has Mr. James W. Rea? A. No, sir.

Q. Have you ever heard Mr. Edwards' reputation discussed in San José? A. Generally, that is all.

Q. You have heard it discussed generally? A. Yes; generally discussed as a man.

Q. And you have also heard Mr. MacKenzie's general reputation discussed there? A. I have heard it; yes.

Q. You admit then, do you, that the reputation of both of those gentlemen has been discussed in San José? A. Yes; I do.

Q. Have you often heard it discussed? A. No, sir; not often.

Q. Who did you hear say anything about their reputation? A. I could not tell you, sir.

Q. Cannot you name me one man? A. No, sir.

Q. You said that you knew their general reputation in the community for truth, honesty, and integrity? A. Yes.

Q. And that you have heard their reputation discussed generally; was it from the discussion that you heard that you formed your opinion? A. No, sir; I would not say so.

Q. How do you form your opinion, if you did not hear it discussed? A. Well, I say I did hear it discussed, but I formed my opinion from their general action from day to day.

Q. From your dealings with them? A. No, sir; I never had any dealings with them.

Q. With either of them? A. No, not at all with Mr. MacKenzie, and I do not suppose twenty dollars worth with Mr. Edwards. Once I paid the Lighting Company for light during his administration.

Q. You say it was from their general action and from what people said about them that you formed your opinion? A. Yes.

Q. Tell me one man in San José whom you have heard say that the reputation of Edwards was good? A. I cannot name any of those men that I have heard discuss it.

Q. You have lived there for six years? A. Yes.

Q. And you came here to testify to general reputation and what you have heard discussed, and you cannot name a single man you ever heard discuss it? A. Yes, I can; I will name Mr. Greengier.

Q. Did you talk with him? A. Yes.

Q. Did you talk with Mr. Greengier about it afterwards? A. No, sir.

Q. Day before yesterday? A. No, sir; I do not think so.

Q. Did you yesterday? A. No, I did not.

Q. Do you swear that you did not mention Mr. Edwards' name to Mr. Greengier yesterday? A. Yes; I didn't see him yesterday.

Q. Did you the day before? A. No, sir.

Q. Did you within a week? A. No, sir.

Q. Have you seen him since this investigation commenced? A. I cannot swear that I have not; perhaps I have.

Q. What did you say to him? A. I don't know.

Q. What did he say to you? A. I don't know.

Q. And do you not recollect what you said to Mr. Greengier about Mr. Edwards' reputation since this investigation started? A. No, sir.

Q. Have you spoken with anybody else about Mr. Edwards' reputation since then? A. I will say yes.

Q. With whom? A. Nagle Burk.

Q. Who is Nagle Burk? A. He lives in San Francisco.

Q. And is a witness here? A. Yes.

Q. Did you see him this evening? A. Yes.

Q. When were you talking to him about Mr. Edwards? A. Yesterday.

Q. What did you say to him? A. I said that I thought Harry Edwards was as straight a man as ever lived.

Q. What did he say to you? A. He conceded the same.

Q. Where did you have this conversation, on the train? A. San Francisco.

Q. Did you speak to any one about Mr. Edwards' reputation before you left San José? A. Yes.

Q. With whom? A. Archie McDonald.

Q. He is another witness here? A. Yes.

Q. When did you see him? A. Yesterday about eleven o'clock.

Q. Where? A. In San José.

Q. What did you say to him at that time? A. I couldn't swear what I said to him. I was talking to him for half an hour and I spoke of Mr. Edwards the same as I did with Mr. Nagle Burk, or McDonald, that I considered and always heard Harry Edwards spoken of as a truthful and honest man.

Q. How did you happen to speak about him? A. I was asking him if he was subpoenaed to come up here to Sacramento, and he said yes.

Q. Why did you ask him if he was subpoenaed here? A. I asked him because I wanted to find out if he was coming.

Q. Did you ask any one else if they were subpoenaed? A. No, sir; I do not think so. I was subpoenaed so late in the evening before and I was very busy and yesterday forenoon I didn't go up in the city at all.

Q. Who else did you speak to? A. I spoke to W. P. Dougherty.

Q. Another witness here? A. Yes.

Q. Was Mr. McDonald and Mr. Burk and Mr. Greengier present? A. No, sir.

Q. Not one of them? A. No, sir.

Q. When you spoke to Dougherty? A. No, sir.

Q. Which spoke first, you or Mr. Dougherty? A. I didn't—I couldn't swear, sir.

Q. What did you speak to Mr. Dougherty when he came up? A. After speaking together we were speaking of Mr. Edwards.

Q. These are the only gentlemen you have spoken to, are they? A. I think so, yes.

Q. Did you ever, or how did you find out that you were to swear to the character of these gentlemen unless some one had spoken to you? A. Well, I cannot tell.

Q. Who subpoenaed you? A. Mr. Buery.

Q. He is another witness here? A. I do not know, sir.

Q. Didn't you see Mr. Buery here, and did he come on the train with you? A. Yes, he did.

Q. Didn't you tell him or talk with him about Mr. Edwards? A. No, sir.

Q. What did he say to you when he subpoenaed you? A. He brought the subpoena to the house about nine o'clock, and I went to the door, and he read the subpoena to me, and I bid him good night.

Q. Is that all you said? A. Yes.

Q. Mr. Buery acted as an officer and subpoenaed you? A. Yes.

Q. Acted as Deputy Sergeant-at-Arms? A. Yes.

Q. Have you your subpoena? A. No, sir; I have not; I left it at home.

Q. At what hour? A. I think in the neighborhood of nine o'clock in the evening; half-past eight or nine o'clock.

Q. What day? A. That was Wednesday evening.

Q. How many people did you meet before eleven o'clock, or up to eleven o'clock A. M. on the day you saw Mr. McDonald? A. I couldn't tell you how many people.

Q. Did you ask any of them if they were coming up here as witnesses? A. I asked Mr. Pierce.

Q. Then you did ask some one else besides Mr. McDonald? A. Yes, I drove up there, and Dr. Pierce asked me if I was coming up here.

Q. I asked you who you asked? A. I do not remember any more.

Q. Is Dr. Pierce here? A. No, sir.

Q. How do you know? A. I was told he had gone home, that is all I know.

Q. Did you talk with Dr. Pierce about Harry Edwards? A. No, sir.

Q. Now, you talked with Mr. McDonald, and with Mr. Burk, and with Mr. Greengier, and Dougherty about Mr. Edwards? A. Yes.

Q. How did it happen that you talked with those gentlemen about the matter? A. I met them on the cars and other places, and talked with them.

Q. Those are the only ones you have talked to? A. I think so, yes.

Q. Be sure of it? A. I am sure of it.

Q. Did you talk about anybody besides Edwards? A. I might have.

Q. About Mr. MacKenzie? A. Yes.

Q. You have about Mr. MacKenzie? A. Yes. I wouldn't swear that I did, but I kind of think I did.

Q. Then you knew when you were subpoenaed what you were coming up here for? A. Yes; I knew I was coming up as a witness on this case.

Q. Did you know you were coming here to testify about Mr. MacKenzie's and Mr. Edwards' reputation? A. I do not know; I surmised it.

Q. Why did you surmise it? A. I knew the case was going on.

Q. You are not a lawyer? A. No, sir.

Q. Why did you surmise that you were coming up here to swear to their reputations? A. I couldn't swear why I surmised it.

Q. No one told you? A. No, sir.

Q. Why did you happen to pick out MacKenzie and Edwards? A. Because I happened to read the papers and saw that they were witnesses from San José.

Q. You had something of an interest in the case? A. Yes, I had some interest.

Q. You saw they were witnesses from the newspapers? A. Yes.

Q. And because they were witnesses you surmised that you were coming up to testify as to their character? A. Yes.

Q. Who have you heard talk of Mr. MacKenzie in San José? A. I could not say.

Q. None? A. I would say these same parties, but I would not swear to it; I think I did.

Q. Did you speak to these gentlemen about MacKenzie? A. Yes.

Q. What did you say to McDonald about MacKenzie? A. I could not say.

Q. Cannot you recollect what you said two days ago about Mr. MacKenzie to Mr. McDonald? A. To Mr. McDonald I did say that I thought and believed Mr. MacKenzie was a truthful and honest man.

Q. Then you did say something about him? A. Yes.

Q. What did you say to Mr. Dougherty? A. I do not know, sir.

Q. What did you say to Mr. Burk? A. I do not know, sir.

Q. You do not recollect what you said yesterday about Mr. MacKenzie? A. No, sir.

Q. You have said that you believed he was a square and honest man? A. Yes.

Q. Is that all you said? A. Yes.

Q. Then you have given your opinion that you knew the general reputation of these gentlemen in the community and you haven't told any one? A. No, sir; I never told any one.

Q. Never told any one that you knew? A. No, sir.

Q. Did you form that belief from personal dealings with Mr. MacKenzie? A. I never had any.

Q. What did you base that belief on? A. On what you would gather from day to day.

Q. What did you gather the day before that? A. I didn't gather anything.

Q. When did you gather anything about Mr. MacKenzie? A. The past two years.

Q. Where? A. In and around San José.

Q. In what regard? A. A general business way.

Q. Then you had business with him? A. No, sir; no personal business, but what you could hear from day to day.

Q. What was there that Mr. MacKenzie did from day to day in business that led you to believe his reputation was good? A. I think he was in the Government employ—gauger or something.

Q. Did you ever hear of any one that was in the Government employ whose reputation was not good? A. Probably I have.

Q. But the simple fact that he is the United States gauger led you to believe that his reputation was good? A. Not that simple fact; no, sir.

Q. What was the rest of it? A. He has an excellent family.

Q. Did you ever know of any one of a good family whose reputation was not good? A. Yes, I have.

Q. Then it was because he was United States gauger and because he was of good family that you made up your mind that his reputation was good? A. Yes, largely so.

Q. Mr. MacKenzie is a very intimate friend of Mr. Rea? A. I do not know, sir; I think he is, yes.

Q. And a very intimate friend of Mr. Edwards? A. Yes.

Q. And of Mr. Dougherty? A. I do not know about that.

Q. And a Mr. Tisdall? A. I do not know about that. I never saw him with Tisdall or Dougherty except since yesterday morning.

Q. Do you know Mr. Uriah Wood? A. I know him by sight.

Q. Did you ever read the "Phoenix," a paper called the "Phoenix," that was published in San José? A. Very little, sir.

Q. You do not sympathize with the "Phoenix?" A. No, sir.

Q. You do with the "Mercury?" A. Yes.

Q. You know the "Phoenix" and "Mercury" are fighting? A. Yes.

Q. You knew that the "Phoenix" made some very severe charges against Mr. MacKenzie, Mr. Edwards, and Mr. Rea, did you not? A. Yes.

Q. And you sympathize with the "Mercury?" A. Yes.

Q. You are an intimate friend of those gentlemen that I have just named? A. Of Mr. MacKenzie.

Q. And of Mr. Rea? A. Mr. Dougherty is the only one that I am an intimate friend of.

Q. Are you a friend of Mr. Rea? A. I have met Mr. Rea a few times; I am not personally acquainted with him.

Q. Did you not get your nomination for Mayor through the influence of James W. Rea? A. Not to my knowledge; no, sir.

Q. Have you never heard it? A. No, sir; never heard it.

Q. Didn't you talk with Mr. Rea and go and see him? A. Not before I was nominated; no, sir.

Q. After you were nominated? A. Yes, I met Mr. Rea after I was nominated.

Q. Did you see him for political reasons? A. Yes, I did.

Q. How many times? A. Perhaps twice.

Q. Did you ask Mr. Rea to assist you? A. No, sir.

Q. Did he offer to assist you? A. No, sir.

Q. Did you see Mr. Edwards about your nomination? A. Yes, sir.

Q. Did you ask him to assist you? A. No, sir.

Q. Did he offer his assistance? A. No, sir.

Q. Did Mr. Rea and Mr. Edwards support you during the campaign? A. I think they did.

Q. Do you know it? A. Yes, I know it.

Q. Absolutely? A. Yes.

Q. Didn't they put up money for you? A. I do not think so, sir, not to my knowledge.

Q. Didn't they put up money to the City Committee? A. Not to my knowledge.

Q. To assist you in the election? A. No, sir; not to my knowledge.

Q. Have you never heard it? A. No, sir.

Q. You know money was used? A. No, sir.

Q. You do not? A. No, sir.

Q. Did you contribute anything? A. I contributed an assessment. I think it was thirty dollars for advertising purposes, and such.

Q. What was the such? A. I do not know anything more than the advertising.

Q. And such? A. I suppose they had to pay for the use of the Republican rooms that they had, and I think the money was raised in an honorable way, and the candidates, as I understand, were assessed for it.

Q. Don't you know that assessments are illegal under the law for contribution? A. I do not.

Q. Did you run for Mayor of San José, and did not know that? A. Yes, I did.

Q. Were you ever a member of the City Council? A. No, sir.

Q. Never ran for any office but Mayor? A. No, sir.

Q. Never aspired for any? A. No, sir.

Q. Never sought a nomination before? A. No, sir.

Q. And you were disappointed in your attempt? A. Disappointed and discouraged.

Q. Mr. Schilling was a more popular man? A. Yes.

Q. That was a three-cornered fight? A. Yes.

Q. Mr. Schilling beat two of you? A. Yes.

Q. Who was the Democratic candidate? A. Dr. Caldwell.

Q. You beat Dr. Caldwell? A. Yes.

Q. What time did you leave San José to come here? A. Twelve-thirty yesterday.

Q. What time did you arrive? A. Eight o'clock, I think.

Q. Did you attend a suit down there known as the Rea-Wood trial? A. Yes.

Q. You left San José at 12:30, and arrived at what time? A. I reached here at eight o'clock last night.

Q. Did you hear the testimony of James W. Rea there before the Court? A. No, sir; not all of it. I was a witness.

Q. You were a witness? A. Yes.

Q. Didn't hear Mr. Rea's testimony? A. No, sir.

Q. Did you hear Mr. Rea's testimony talked about—you were a witness in that case? A. I do not know as I was; I do not think I was a witness.

Q. Were not you a witness there to establish the character and reputation of Mr. Rea and Mr. Edwards? A. Yes.

Q. Then, this is the second time you have been a witness to both reputations? A. Yes.

Q. You know that a good many citizens took the stand in that case and testified that his reputation for truth, honesty, and integrity was bad? A. Yes.

Q. And you took the stand in that case to bolster it up? A. I took the stand and swore that I considered his reputation was good.

Q. Then you were in the field whenever Rea's and Edwards' reputation was attacked? A. I am in this time, and was that time.

Q. There are a great many witnesses against Mr. Edwards? A. I believe so.

Q. And some number of the respectable, honorable, and good citizens of San José? A. Yes.

Q. Who testified that his reputation for truth, honesty, and integrity was bad? A. Yes.

Q. Right in the city where he lives? A. Yes.

Q. Did you know that Mr. Rea testified in that case—that is the case of Edwards against the City Council of San José—that Mr. Edwards received a credit of two hundred and fifty shares of the capital stock of the Electric Improvement Company, of a par value of five thousand dollars, with a paid up capital of one hundred thousand dollars guaranteed? A. I did not.

MR. RICHARDS: In that case in which you testified to the reputation of Mr. Edwards, of which you have spoken, you know the result, what the verdict of the jury was in that case, whether in favor of Mr. Edwards or against him? A. In favor of him.

MR. McPIKE: Has that case been finally determined yet? A. I do not know, sir.

Q. Don't you know it is on appeal in the Supreme Court? A. I do not know, sir.

Q. You have heard it, have you not; you did not carry the transcript to the Supreme Court and file it, but you have heard it was appealed? A. I think it is on appeal.

Q. And is there yet? A. I think so.

Q. Do you know whether Mr. Edwards' reputation was the only point of issue in the case? A. I do not know.

MR. BLEDSOE: You have lived in San José six years? A. Yes.

Q. And have been engaged in business all that time while you have been there? A. Yes, I have been engaged in business most all the time.

Q. An active business that would bring you a great deal in contact with other citizens of San José? A. Yes.

Q. I presume you have got pretty well acquainted with men there? A. Yes.

Q. And you have taken some interest in politics? A. No, sir; but very little.

Q. Was the last election, of which you were candidate for Mayor, your first experience in politics? A. Yes, in California, sir. In fact, my first experience anyway.

Q. You must have had some acquaintance with the politicians of San José in order to have received that nomination? A. The nomination came to me; I did not seek it.

Q. How long had you been acquainted with Mr. Rea? A. I do not think longer than two years.

Q. And with Mr. Edwards? A. Four years.

Q. You have lived in San José long enough to become acquainted with the most interesting topic of discussion in political affairs? A. No, sir.

Q. Don't you know that there were certain factions in politics in San José? A. Yes, I do know it.

Q. You knew that there was a Rea faction and an anti-Rea faction? A. Yes.

Q. In San José politics? A. Yes.

Q. And you knew that those factions were always and at all times arrayed against each other? A. Yes.

Q. Now, which one of those factions did you stay with? A. Well, I would stay with the Rea faction.

Q. How long have you been supporting the Rea faction in San José politics? A. I vote the straight Republican ticket always.

Q. You have just stated that you sided with the Rea faction? A. That is the Republican ticket.

Q. You consider the Rea faction the Republican ticket? A. Yes.

Q. Isn't it a fact that in the Republican party in San José there are two factions—one the Rea faction and the other the anti-Rea faction? A. Yes, at present there is.

Q. Now, in the Republican party, of those factions, you sided with the Rea faction? A. Yes.

Q. How long has it been since you sided with the Rea faction—how long have you been in that faction of San José politics? A. Since I have been there.

Q. Then, you have, ever since you have been there, taken more or less interest in politics? A. I vote that ticket—the Republican ticket.

Q. Then, ever since you have been in politics your sympathies and influence have been with that side of the faction represented by Rea and his friends? Do you know that Mr. Edwards and Mr. Rea are most intimately connected in San José? A. Yes.

Q. Is it true, or not true, that both Mr. Edwards and Mr. MacKenzie have had the reputation in San José, ever since you have been there, of being aids to Mr. Rea in making his political fights? A. Yes.

Q. And in carrying on the party politics adopted by his faction, is that true? A. Yes, I think so.

H. N. M. SPRING.

Called and sworn, testified as follows:

MR. RICHARDS: Mr. Spring, where do you reside? A. San José.

Q. How long have you lived in San José? A. All my life. I was born there.

Q. In what business are you engaged? A. I am a merchant, in the clothing business.

Q. What is the firm of which you are a member? A. T. W. Spring and Son, is the firm name.

Q. How long have you been engaged in business as a member of that firm? A. Six years.

Q. Up to that time the place was conducted by your father, T. W. Spring? A. Yes.

Q. Do you know John D. MacKenzie? A. I do; yes.

Q. How long have you known him? A. As long as I can remember.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do, sir.

Q. What is that reputation? A. His reputation is good, in my estimation.

Q. Do you know H. J. Edwards? A. I do, sir.

Q. How long have you known Mr. Edwards? A. About four years.

Q. You say you know Mr. Edwards? A. I do, sir.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. Yes.

Q. What is that reputation? A. Good.

Cross-Examination.

MR. McPIKE: What is your age? A. Twenty-seven.

Q. How long have you been a member of the firm? A. Six years.

Q. You have known Johnnie MacKenzie all your life, you say? A. Yes.

Q. And Mr. Edwards how long? A. About four years.

Q. What was Mr. Edwards' business on your first acquaintance? A. He was in the Gas Company, I believe, when I first formed his acquaintance—collector of the Gas Company.

Q. Do you know Mr. Rea? A. I do, sir.

Q. An intimate friend of his? A. No, sir.

Q. You say that Mr. MacKenzie's reputation is good, in your estimation? A. Yes.

Q. Is that as far as you are willing to go in your statement? A. No, sir.

Q. Have you ever heard his reputation discussed? A. I have, yes.

Q. Frequently? A. Not very frequently, no.

Q. How long since? A. I think it is about two years ago that I remember his reputation discussed.

Q. Who discussed it? A. That I could not tell you; I cannot remember.

Q. None since then? A. No, sir.

Q. You cannot name anybody? A. No, sir.

Q. You discussed his reputation? A. No, sir.

Q. How did you find out what his general reputation was down there if you never heard it discussed? A. By having business with the man.

Q. Then it is through your business transactions with him and your personal contact with him that you formed your estimate? A. Yes; certainly.

Q. Are you connected in any way in politics down in San José? A. No, sir; I am not an active politician in any way.

Q. Is the firm of which you are a member active in politics? A. No, sir; do not have anything to do with politics.

Q. No contracts at all with public institutions? A. No, sir; no contracts.

Q. Have no privileges from public institutions down there of any kind? A. No, sir.

Q. Isn't your firm furnishing supplies and clothing to the infirmary there? A. Sometimes they do when they come after them. We do not send them until they come after them.

Q. Do you generally furnish them? A. No, sir.

Q. But you get more orders than anybody else? A. No, sir.

Q. Haven't you endeavored to get more than anybody else? A. No, sir.

Q. You are generally a delegate to the city conventions down there? A. I have been, off and on.

Q. Lately? A. I was at the last county convention a delegate, yes.

Q. Were you ever a delegate to the State convention? A. No, sir.

Q. Is Mr. Rea an intimate friend of yours? A. No, sir; not an intimate friend.

Q. Is Mr. Edwards? A. No, sir.

Q. Are you engaged in any kind of furnishing at the hands of the Board of Supervisors of that county? A. No, sir; I am not.

Q. Have you ever been? A. No, sir.

Q. Have you made an application to the Board of Supervisors down there for the granting of any privilege? A. No, sir.

Q. Has your firm? A. No, sir.

Q. About Mr. Edwards, have you ever heard his reputation discussed? A. No, I never heard his reputation discussed.

Q. You have never heard it discussed? A. I have heard him spoken about on the street.

Q. You have heard things said against him and things said in his favor? A. I have heard things said against him by his political enemies, and I have heard his friends speak well of him.

Q. Did you ever hear anybody besides his friends speak well for him? A. I have heard men I suppose were not his personal friends.

Q. Who were they? A. I could not tell you.

Q. No one? A. No, sir.

Q. He is a very particular friend of Mr. Rea? A. I know they go together.

Q. Do they manipulate politics down there a good deal? A. That I cannot say.

Q. Don't you think so? A. No, sir.

Q. Isn't it a matter of common notoriety there in San José that they do? A. By their political opponents, yes.

Q. It is considered by their political friends that they do? A. No, sir.

Q. Do you not know that Mr. Edwards and Mr. Rea have manipulated politics there and always were together? A. I know they were together; I do not know whether they manipulated politics or not.

Q. Anyway they worked together? A. I suppose they do, yes.

Q. Don't you know that is a fact—don't you? A. No, sir; I could not say.

Q. And Mr. MacKenzie does, also? A. That I could not say for a fact; I do not know.

Q. Is Mr. MacKenzie a very intimate friend of Mr. Rea's? A. Yes, I believe he is from what I have heard.

Q. Have you discussed Mr. MacKenzie's reputation in San José? A. Yes.

Q. Who with? A. Parties that come up here.

Q. What are their names? A. I think I discussed him with Mr. Austin.

Q. Who else? A. He is the only one.

Q. What did you say to Mr. Austin? A. That I do not remember.

Q. Don't you remember what you said yesterday? A. No, sir.

Q. What did Mr. Austin say to you? A. That I could not remember.

Q. Then you haven't a good memory anyway? A. Good.

Q. Did you discuss Edwards, too? A. No, sir; we did not.

Q. Simply spoke about Mr. MacKenzie. Who did you ever tell in San José that you knew the reputation of Mr. Edwards and Mr. MacKenzie? A. I never told anybody.

Q. Do you swear now that you never told any one in San José, or else-

where in your life, that you knew what the general reputation of these two parties were? A. I do, yes.

Q. Never expressed yourself about that to anybody? A. Never expressed myself to anybody.

Q. How does it happen that you are subpoenaed as a witness here? A. I do not know; I suppose Mr. MacKenzie knew I was a friend of his, and subpoenaed me. I was very much surprised myself that I was subpoenaed to come here.

Q. Mr. MacKenzie knew that you were a friend; how did Mr. Edwards happen to call you? A. I do not know how Mr. Edwards happened to call me. I think it was Mr. MacKenzie.

Q. Did you ever communicate to anybody, after you came to Sacramento, that you knew the reputation of these two men? A. No, sir.

Q. Not a person? A. No, sir.

Q. Did you talk to Mr. Richardson about it? A. I discussed his reputation, but did not communicate to him.

Q. Could you discuss the matter without communicating it? A. If you had said discussed, I might have answered your question.

Q. Do you understand the word communicate? A. I did discuss his reputation; I discussed it with Mr. Richards.

Q. Who else did you discuss it with? A. That is all.

Q. Why was it a matter of discussion with you? A. I simply talked with him.

Q. One of you opposed it and the other affirmed it? A. No, sir.

Q. How can you discuss a matter without having something to affirm and something to oppose? A. He didn't oppose my discussion and I didn't oppose his.

Q. Who, besides Mr. Richards, did he discuss it with after you got to Sacramento? A. Well, I discussed with Mr. Austin, and Mr. Greengier, and Mr. Menter.

Q. What did you say to Mr. Austin? A. Really, I do not know; we had a discussion about the matter.

Q. You had a discussion, after you arrived in Sacramento, with these gentleman, but do not remember who it was? Do you remember any one word you said to Mr. Austin? A. No, sir; I do not.

Q. Any you said to Mr. Greengier? A. No, sir.

Q. Any to Mr. Menter? A. No, sir.

Q. Have you ever had any business with Mr. Edwards? A. No, sir; no business with Mr. Edwards, only using the Electric Company's light.

Q. You have had business with him? A. We use the Electric Company's light in our place of business.

Q. Is your opinion of reputation confined to the personal dealings with him in the electric light business? A. In fact, it is all I know of him is through my business with him. When I meet him on the street I say "How do you do?" I might meet him somewhere and discuss matters, but nothing of importance.

Q. He has always appeared to be a gentleman to you? A. Yes.

Q. And has always been square in his dealings with you? A. Yes, square and upright.

Q. And so has Mr. MacKenzie? A. Yes.

Q. And it has been upon those two facts alone that you say their reputation for truth, honesty, and integrity is good? A. No, sir; from what I have heard.

Q. Do you belong to a political faction in San José? A. No, sir; I do not.

Q. Are there any political factions there? A. I believe there are—yes.

Q. Are you a Republican or Democrat? A. I am a Republican.

Q. Are there any factions in the Republican party? A. The political faction seem to be between the two lighting companies, as far as I can see.

Q. Both of them Republican lighting companies? A. There are Democrats and Republicans on both sides.

Q. In the Republican party, isn't it a fact that there are two political factions in San José? A. I believe there is—yes.

Q. Don't you know it? A. I think there is a faction I think they call the purifiers, and one they call the boodlers.

Q. Do you belong to the boodlers or the purifiers? A. I don't belong to either side.

Q. Which side do you sympathize with? A. Neither side.

Q. Does Mr. Rea belong to the boodlers or the purifiers? A. He is named as belonging to the boodlers.

Q. Mr. MacKenzie also has that name? A. Yes.

Q. And so has Mr. Edwards? A. Yes.

Q. You have often heard that fact stated? A. I haven't heard it often, but I have heard it from somebody opposed to them.

Q. Somebody opposed to boodlers? A. No, sir; opposed to Mr. Rea, Mr. Edwards, and Mr. MacKenzie, individually.

Q. So that they belong to the particular faction that are known as boodlers? A. I could not say.

Q. You voted at the last city election? A. Yes.

Q. Those factions existed at that time? A. I believe they did, yes.

Q. Mr. N. H. M. Spring was a candidate for Mayor at the time? A. No, I do not think so—somebody else.

Q. Mr. Barnhart was the candidate for Mayor? A. Yes.

Q. Was he supported by one of those factions? A. Are you talking about the boodlers and purifiers?

Q. Yes. A. That I could not answer. I do not know whether he was or not. I do not know enough about politics to answer your question?

Q. Did you vote for Mr. Barnhart? A. I did; yes, he was a good man and so I voted for him—a great deal better than the other man in my estimation.

MR. BLEDSOE: You stated a while ago that you thought that the factions appeared to be between two corporations there? A. Yes.

Q. The Electric Improvement Company and the Light and Power Company. Mr. Reihl is connected with the Light and Power Company? A. Yes; I believe he is President of the Light and Power Company.

Q. Who is President of the Electric Improvement Company? A. I do not know.

Q. Mr. Edwards is connected with it? A. I believe he is Manager; he is the man I do my business with.

Q. Do you mean to say that politics in San José has resolved itself into a question of contest between two parties—between two corporations? A. That has a great deal to do with the politics of San José.

Q. You base that statement on your observation? A. My own observation and what I read in the papers.

Q. Then politics in San José is a contest between two corporations as to which shall control the patronage of the city lighting? A. It would seem to me so. I do not know whether the political patronage, but it seems to be the lighting patronage.

Q. Are you the son of T. W. Spring? A. Yes.

Q. Is he living now? A. No, sir; dead.

Q. Don't you know that there is also in politics a Rea faction and an anti-Rea faction? A. Yes.

Q. And they are arrayed against each other at all times and on all occasions? A. Yes.

Q. You have taken interest enough in politics there to vote at all elections? A. When I was in the city of San José.

Q. Have you discussed politics sometimes? A. Once in awhile, with my friends, but I am not a politician myself. I am elected once in awhile to these conventions, against my own will.

Q. As a Republican? A. Yes.

Q. Is it not a fact that nearly everybody in San José—all Republicans, in fact—take one side or the other in the factional fight, with Rea on one side and his enemies on the other; there is no middle ground between these two factions? A. I cannot answer that question; I do not know.

Q. Did you take any interest in politics, or enough to take one side or the other? A. Yes, I have.

Q. Which side do you take? A. I take the side represented by Rea and his friends. I vote for my friends, that is the way I vote. I am a Republican when it comes down to a Presidential campaign; further than that I stand with my friends, and sometimes some of my friends who are on the other side, and I vote for them, and sometimes my friends were on the other side. It don't make any difference to me. I vote for them just the same, whether for Rea or against him.

Q. Do you know what is meant by general reputation? A. The reputation a man has on the street, I presume.

Q. What is said about him in the community where he lives? A. Yes.

Q. Is that what you base your testimony on? A. No; I base my testimony on my personal ideas.

Q. Suppose your own personal idea was left out of the question; then could you testify that Mr. Edwards' reputation is good and Mr. MacKenzie's reputation is good for truth, honesty, and integrity? A. To this extent: the only way I have heard it run down was by their political enemies. I have never heard any one say anything against Mr. Edwards or Mr. MacKenzie unless they were political enemies of those two men.

MR. BULLA: I think you stated that you preferred the Electric Improvement Company's light to the other? A. We have a contract with them. Some years ago when these two companies started in San José—the old company and the new company—and we were using at the time eight or ten lights of the old company's—

Q. That is the Brush Company? A. Yes; and my father went to the old company, stating that he wanted a price for so many lights, and he also went to the Improvement Company for the same thing, and the

outcome of it was that the new company would furnish the new lights cheaper, and consequently we took their lights. Since this occurred warfare has existed between the two companies. We thought it was right to encourage competition, and I haven't changed, because before we paid three dollars and a half a light to the old company that we get now for a dollar and six bits; so I thought it better to encourage competition, and that is the way it came about as a business proposition.

J. NAGLEE BURK.

Called and sworn, testified as follows:

MR. RICHARDS: Your name is J. Naglee Burk? A. Yes.

Q. You are a nephew, are you, of the late Henry M. Naglee? A. Yes.

Q. Do you live in San José during the summer? A. Yes.

Q. Where during the winter? A. Sometimes in San José.

Q. You have business interests and property interests in the city of San José, or close there? A. Both, yes.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known him? A. Several years.

Q. Do you know the reputation of Mr. H. J. Edwards in San José for truth, honesty, and integrity? A. Yes.

Q. What is that reputation? A. Always good.

Cross-Examination.

MR. McPIKE: When were you subpoenaed? A. I think, night before last.

Q. Where? A. At the Santa Clara Club.

Q. Where did you get acquainted with Mr. Edwards? A. I met him in San José.

Q. When? A. Several years ago; I cannot scarcely say what year. It is several years ago.

Q. Have you ever heard his reputation discussed? A. I have.

Q. Where? A. In San José.

Q. Often? A. Well, I heard about a year ago—I heard it discussed for the first time where there was a question of his integrity in connection with a suit that he started against a paper there.

Q. A good many people took the stand and swore that his reputation for truth, honesty, and integrity was not good? A. I do not know, I am sure; I did not attend the trial but one day, at the time some of my friends were testifying that his reputation was good.

Q. Were you a witness? A. No.

Q. You did not testify in that action? A. No, sir.

Q. You were not asked to? A. I was not asked to.

Q. Do you know Mr. Barnhart? A. Very well.

Q. Have you ever talked about Mr. Edwards since discussing his reputation a year ago? A. Yes.

Q. When? A. At different times I spoke of him and his association with the club and other places, among friends.

Q. Is Mr. Edwards a member of the club? A. He is, I think. And the reputable people of San José are, most of them.

MR. BLEDSOE: Is the club pretty large? A. Yes; those that are in the club are reputable.

MR. McPIKE: You think that the Santa Clara Club has all the respectability of San José? A. It is a representative club, and the only one of consequence that I know of.

Q. Are all of the members friends of Mr. Edwards? A. I can not answer that all the members are. I am a friend of Mr. Edwards, and a very good one.

Q. Your sympathies are with him? A. In any case where he is in trouble, yes.

Q. Have you ever been a witness as to reputation before? A. No, sir; never.

Q. Mr. Edwards is a member of the Electric Improvement Company, is he? A. I think a manager for the company.

Q. Up to a short time ago the Electric Improvement Company had a contract for lighting the city? A. I do not know, I am sure.

Q. You do not know? A. I know their lights were put in San José. Q. At the time that Mr. Edwards was manager in the Electric, a light was put in front of your house? A. It was—yes.

Q. And afterwards removed? A. It was taken away from in front of the gate and placed some two hundred feet from the house.

Q. And the city was charged for the light? A. I do not know that the city was charged for the light; we were not.

Q. You were not? A. No, sir. Q. A considerable fuss was made about it in the newspapers down there? A. I do not know—I think it mentioned it. Would you like me to tell exactly what I know about that?

Q. And the Electric Improvement Company removed it, or the electric light was removed by order of the City Council? A. It was—yes.

Q. There was never any order by the City Council given to Mr. Edwards, as manager of the company, allowing him to put the electric light in that place? A. Mr. Edwards assured me of that fact. I think that was done two or three years ago. I think he assured me, when I asked him about it, that he was instructed by the City Council to put it there. I was away at the time, and never knew how the light was put there, and when I made inquiries of Mr. Edwards and others they assured us that he was instructed to do so, and he said he was not obliged to put a light there.

Q. And the matter was discussed in the papers, and after considerable controversy over it it was removed? A. I think the other parties were desirous of having the light further up from the city, and had some influence with the Council. They were all there at the time, and in spite of my remonstrance it was removed from in front of my gate down a block, because there were more people in that neighborhood than where it was. It was removed from there and put a block further up.

Q. It lighted your place? A. It didn't light our place, because our place is a hundred and forty-three acres.

Q. The entrance to the place? A. Yes. It was to some extent an harbor for people to talk over matters in the dark.

Q. You admit that people do that in San José? A. They do it all over, and probably they do it in your city, too, sir.

Q. What is my city? A. I do not know.

Q. Are you a Democrat or Republican? A. I am a Democrat.

Q. You are a particular friend of Mr. Rea's? A. No, sir.

Q. Intimate with him? A. I simply know him; I was introduced to him once.

Q. Is he a member of the club of which you speak, the Santa Clara Club? A. I do not think I have seen him there more than once or twice, and I am under the impression that he is.

Q. You know that he is a member? A. I do not know that he is, but I think he is, because it is one of the rules of the club not to admit anybody that is not responsible.

Q. Have you attended any of the meetings of the Democrats in San José lately? A. No, sir.

Q. Any of the Republicans? A. I have not.

Q. You vote in San José? A. I do.

Q. Did you vote at the last city election there? A. I did.

Q. Did you vote for Mr. Barnhart for Mayor at that time? A. No; that was not the election. I was not there at that time.

Q. That was the last city election. A. I didn't vote at that time. I must have been away at that time. I do not think I voted then; it must have been the time before. I do not think I voted at the municipal election. That is six or eight months ago, is it not?

Q. And because Mr. Edwards is a member of your club, and your club has all the reputable people, you conclude that his reputation is good? A. I think Mr. Edwards is an honorable and upright man, not only because he is a member of the club, but because I have met him in a good many other places.

Q. And because he has put an electric light in front of your place? A. Mr. Edwards, I do not think, put the light there at the time. As far as Mr. Edwards is concerned, he had nothing to do with the matter. I asked Mr. Edwards about it at the time. They tried to get it further down. One Baker who lived further down started this measure, and I did all I could to keep it there.

Q. There was a contract existing between the city and the Electric Improvement Company, with reference to where the electric light should be? A. Yes.

Q. Did not Mr. Richards know from the contract where the electric light should have gone? A. Yes, he should, and told me he knew it.

Q. That was a matter of contract? A. Yes.

Q. Didn't the newspapers take it up and comment on the fact, and say the electric company put a light in front of your place when it knew it hadn't any right to? A. I asked Mr. Edwards about it and he said it was all right.

MR. BLEDSOE: You say you have one hundred and forty-three acres? A. Yes.

Q. Is it in the city limits? A. Yes.

Q. Do you pay city taxes? A. Yes; I think we are the largest city taxpayers in San José.

Q. The city pays for those lights? A. Yes. That was one of the points I made in connection with this matter, as it was the first time we ever requested anything of the city, and we thought it no more than right and just that they leave that light there. I found afterwards I didn't require the light because it benefits me better where it is now.

A. McDONALD.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you live? A. San José.

Q. How long have you lived there? A. About twenty years, I think.

Q. You have been engaged in business in San José during that time?

A. Yes; for fifteen years I was Superintendent of the San José Woolen Mills, and for the last four or five years I haven't been in any business.

Q. You are now the President of the Hotel Vendome Company?

A. Yes.

Q. And also a Director in the Garden City National Bank? A. I am a Director in the San José Woolen Mills.

Q. Do you know H. J. Edwards? A. I do.

Q. How long have you known him? A. Some eight or ten years, I think.

Q. Do you know his general reputation in that community for truth, honesty, and integrity? A. Yes, I think I do.

Q. What is that reputation, good or bad? A. For truth and honesty?

Q. And integrity? A. I believe it to be good.

Cross-Examination.

MR. MCPHIE: Do you know a Mr. Rea? A. Yes, I know Mr. Rea.

Q. Do you ever meet Mr. Edwards? A. Well, I meet him occasionally—probably meet him on the street.

Q. Do you meet Mr. Rea often? A. Very seldom.

Q. Have you any business with Mr. Edwards? A. No business whatever, excepting in the Electric Improvement Company, as President of the Hotel Vendome; it is necessary for me at times to go to see the reports of the regulators.

Q. You have often heard Mr. Edwards' reputation discussed down in San José, have you not? A. Politically, yes; but otherwise no.

Q. He is engaged in a business that brings him in contact with politics? A. Mr. Edwards?

Q. Yes? A. I think so.

Q. The furnishing of light to the city by the Electric Improvement Company, of which he is Manager, brings him in contact with the city officers and City Council, and he is really engaged in a business there that you might say is almost entirely political? A. Well, I do not know about that—it being entirely political.

Q. I mean by that, Mr. McDonald, that he is Manager of the Electric Improvement Company, and devotes all of his time, or very near all of his time, to the business? A. Yes.

Q. Has very little business beside that? A. I do not know of any other business.

Q. And that company is interested nearly all the while in politics, with their contracts with the City Council and getting what they term pulls to get them allowed, so they are brought in contact with the city officers—that would naturally follow? A. Yes, I would presume so.

Q. And it is in connection with those matters that you have heard Mr. Edwards' reputation discussed? A. Yes.

Q. Has there been a good deal of talk down there about the awarding of a contract to the Electric Improvement Company at a cost of between

\$11,000 and \$12,000 more for the lighting of the city than the other company agreed to furnish the light for? A. Yes, there has been a good deal of talk about their awarding the contract.

Q. And it was charged down there by a great many of the citizens—good reputable men—that the contract was awarded to the Electric Improvement Company through the influence, chiefly, of Mr. Edwards. That has been the common talk down there? A. Not that I am aware of; I never heard it.

Q. Through Mr. Rea and Mr. Edwards? A. I presume the representatives of the company. I presume that they did what they could to get the contract with the Council.

Q. Isn't it a fact, Mr. McDonald, that that was pretty well known down there, and that was charged? A. Yes, I think that was charged.

Q. And it was charged that by so doing the taxpayers there had to pay a good deal more money for their lights than if these men had not had so much influence with the City Council so as to have the contract awarded to them? A. I paid but very little attention to it from the fact that I pay no attention to politics. I have kept myself aloof from them.

Q. There was a citizens' movement in the last city election? A. Yes.

Q. You took part in that? A. Yes.

Q. Did you go to their convention? A. I was elected a delegate to nearly every city, county, and State convention for the last seven or eight years.

Q. Republican? A. Republican—yes, and I think during that time I have only attended, perhaps, in the last five or six years, as far as I can remember, only two conventions, from the fact I do not care to get into politics. I did go to the last city election, and I went in the interest of a particular friend of mine, and I wanted to help nominate him for office.

Q. You are also a Trustee of the Stockton Insane Asylum? A. I am.

Q. And have been for some time? A. Only about a year. I was Trustee of the Agnews Asylum for four years.

Q. This citizens' movement that has taken place down there was occasioned largely by a split in the Republican party, was it not? A. Well, to a certain extent perhaps, it was, and I think, also, by a partial split in the Democratic party—the parties were divided in factions.

Q. And those two factions were composed of the Rea men and the anti-Rea men? A. I guess perhaps that is so.

Q. Is that so or not? A. I will answer that by saying so to the best of my knowledge.

Q. And at the election which ensued thereafter there were three candidates for Mayor, wasn't there—what is known as the People's candidate, Democratic candidate, and straight out Republican? A. At the last election, yes; there were three candidates in the field.

Q. Mr. Rea and Mr. Edwards supported what is known as the Republican ticket, and the Democrats the Democratic ticket, and the fusion between Democrats and Republicans the fusion ticket, or Republican ticket? A. I am not in a position to testify under oath who Mr. Rea did support; but to the best of my belief and knowledge Mr. Rea supported Mr. Barnhart for Mayor.

Q. Did you support Mr. Barnhart? A. Well, I do not know as I am

obliged to answer that question. In the last election, and also the four or five last elections, I have kind of gone by myself quietly, took my ticket and held a little convention by myself, and I voted for parties on the three tickets—I voted all three of the tickets—I voted part of the three tickets. I should think that would be satisfactory.

Q. Did you support Mr. Barnhart? I think I answered that question by stating that I voted part of the three tickets.

MR. CHAIRMAN: You answer the question by stating that you voted two or three tickets? A. Yes.

MR. McPIKE: Did you attend the Rea-Wood trial? A. I was in there, I think, about half or three quarters of an hour one day.

Q. You did not hear much of the testimony? A. No, sir.

MR. BLEDSOE: If you took no part in politics there, how does it come about that you were elected a delegate to pretty near every State and county convention for the last eight years? A. Well, I do not know how that was. I have been approached several times to allow my name to be used for a delegate, and I have refused, but was put on the ticket and I was elected. And the last time when I was approached on that proposition, I said, "Gentlemen, I will not go to the convention, and if I am elected I will not give my proxy to anybody."

Q. Isn't it a fact in San José that there are two factions in the Republican party; one a Rea faction and the other an anti-Rea faction? A. There are two parties in the field; one is known as the Purifiers and the other as the Ring.

Q. Is it a fact that Mr. Rea and Mr. Edwards are connected with what is known as the ring? A. I believe they are charged with that.

Q. Those who are opposed to it are what are called the Purifiers? A. That is the supposition.

Q. Isn't it true that that is the all-absorbing topic in San José—the contest between those two factions? A. It is a pretty heavy fight between the two factions.

Q. Which one of those two factions do you belong to, or which one of those factions do you give your sympathies to? A. I have friends on both sides, very warm, intimate friends.

Q. As between those two factions, which one do you sympathize with? A. As between the two factions it would be pretty hard for me to draw the line of demarkation. My sympathies run lately towards the citizens' movement.

Q. Is that opposed to what you call the ring? A. Yes.

Q. That is what is known as the anti-Rea faction? A. Yes.

J. N. BURK.

Recalled.

MR. McPIKE: You were present a moment ago, and you were admonished by the committee just a moment ago not to converse with the witnesses after you left the room? A. No, sir; I did not hear it.

Q. Were you not present a few minutes ago when the Chairman of the committee instructed the witnesses not to converse with other witnesses? A. I did not hear it, and did not notice it.

Q. You did converse with them after you went out? A. I did.

Q. Told them what you testified to? A. I told Mr. Edwards, yes. I was talking with Mr. Edwards.

Q. Some of the witnesses might have been there? A. Yes.

Q. Was Mr. Greengier present? A. I do not know, I am sure.

W. P. DOUGHERTY.

Called and sworn, testified as follows:

MR. RICHARDS: Your name is W. P. Dougherty? A. Yes.

Q. Where do you live? A. In San José.

Q. How long have you lived in San José? A. About thirty-four years.

Q. And you have been in business in that community? A. Yes.

Q. For what length of time? A. Thirty odd years.

Q. In what occupation have you been engaged? A. Chiefly lumber business, but I have a good many other interests.

Q. You are at present the President of the Santa Clara Valley Lumber Company? A. I am Manager and President.

Q. You also have other interests in the county? A. Yes.

Q. Of what character? A. The San José Brick Company, a large manufacturing business.

Q. Do you know H. J. Edwards? A. I do.

Q. How long have you known him? A. Ever since he has been in San José, I think ten or twelve years.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do.

Q. What is that reputation? A. It is A 1.

MR. McPIKE: What do you mean by A 1. A. First class; good.

MR. RICHARDS: Do you know John D. MacKenzie? A. I do.

Q. How long have you known him? A. Since he was a baby.

Q. Do you know the reputation of Mr. MacKenzie for truth, honesty, and integrity? A. Yes.

Q. What is that reputation, good or bad? A. It is good.

Cross-Examination.

MR. McPIKE: Did you ever hear the reputation of those men discussed? A. No.

Q. Never heard it discussed? A. No; not that I remember.

Q. Where do you live in San José? A. I live on First Street.

Q. Do you go down town sometimes? A. I go down two or three times every day to my office.

Q. You see a great many people? A. Yes.

Q. And never heard either of these gentlemen discussed? A. Not as to their honesty and integrity; no.

Q. Have you ever heard their reputation discussed? A. Not Mr. Edwards'. I never heard any person say anything against his reputation. I have always heard it spoken well of.

Q. Who did you hear speak well of him? A. The whole town nearly. Every person that I know of that I associate with; but where there was any occasion to speak of him at all, they spoke well of him.

Q. You are an intimate friend of Mr. Rea's? A. I am friendly with Mr. Rea; not more intimate with him than hundreds of others in San José.

Q. You are intimate with Mr. Edwards? A. Not any more so than a great many of my neighbors and friends, that is all.

Q. I ask you if you are not an intimate acquaintance of those two gentlemen? A. I have an acquaintance with them.

Q. Is it not a fact that you are? A. Yes, I am intimately acquainted with them.

Q. Wouldn't you be classed as an intimate friend of both of them in a business way? A. Yes, our friendship has been mostly in a business way.

Q. Socially, too, you go out with them, and to the club? A. I meet Mr. Edwards at the club occasionally, but never Mr. Rea. I never meet Mr. Rea at the club.

Q. Don't you think from the fact that you are so intimately associated with Mr. Edwards, and that you have quite a feeling of friendship for him, that it probably might bias your feelings? A. No, I think not. My acquaintance first with Mr. Edwards came about in a business association.

Q. The Electric Improvement Company? A. No, sir; he was manager for the Gas Company for a great many years.

Q. And you were a Director, were you? A. No, sir; no connection with the company, but they had a great deal to do in my line, probably furnish everything they required from me—business relations.

Q. You are largely interested in public buildings down there? A. No, sir.

Q. Have you any interest to any extent? A. I am not interested at all.

Q. Have you ever had contracts from the City Council for sewers—sewer contracts? A. Never had from the City Council of the city in my life.

Q. Never had any contract of any kind? A. No, sir; not in San José.

Q. You attend the Republican Convention there, don't you? A. I do not know, sir.

Q. The Democratic? A. No, sir.

Q. Never meddle in politics? A. Except for my friends.

Q. Mr. Edwards is one of your friends? A. Yes.

Q. And used what influence you have in his favor at any time? A. He has never been a candidate for anything that I know of.

Q. Without being a candidate, have you used your influence for Mr. Edwards in connection with any political body? A. No, sir; because he never called on me.

Q. He never called on you? A. I vote at the election, and always go and vote for the best man regardless of party.

Q. Did you use your influence before the City Council to assist Mr. Edwards in any way? A. I used my influence before the City Council, or with some of the members and before that body, to get the contract from the city for the lighting—to light the city by the Electric Improvement Company.

Q. You own stock in the Electric Improvement Company? A. I do.

Q. What is the amount of stock that you own in that company?

A. The amount of shares?

Q. Wasn't it two hundred and fifty? A. I think probably that it is. Mr. Edwards had two hundred and fifty, Mr. Rea two hundred and fifty, and two or three other gentlemen had equal amounts.

Q. That is, about twelve hundred and fifty shares were divided among five of you? A. I think probably that is correct.

Q. That stock was put in at the par value of two hundred dollars, calculated at twenty dollars a share, with a guaranteed capital of one hundred thousand dollars? A. No, sir.

Q. Wasn't that stock issued to you and to Mr. Edwards with these other gentlemen as a consideration for your influence and effort in obtaining a contract from the City Council for the Electric Improvement Company? A. I think not, sir.

Q. Don't you know that it was? A. No, I do not.

Q. Did you pay anything for the two hundred and fifty shares? A. My shares cost me nearly six thousand dollars, I think.

Q. Did it cost you anything at the time you got it? A. I do not think when we first got a charter—I do not think I got any stock—we didn't get any stock for a long time.

Q. But each of you had one share issued to you, didn't you? A. I don't think so; I do not remember.

Q. The rest of the stock, except one share which went to Mr. Edwards and to Mr. Rea, went into the pool? A. I think so. The stock was put in my hand. I had a fifth of the capital stock, and I forget now what the capital stock was.

Q. Wasn't it a quarter of \$25,000? A. I think it was a fifth. Maybe it was; of course I haven't paid any attention to it for years.

Q. Did you understand from the Directors of the corporation that you gentlemen should have this \$25,000 worth of that stock for your influence in obtaining this contract, and go into this concern and obtain the contract for lighting the city from the City Council, and that your stock should not be assessed at all? A. I have told you about that. I couldn't answer it in that way because I do not think that was the understanding. I figured on this basis: Mr. Boyant came to me a year prior to this time and wanted to know if I would assist him in getting a right to get into and light San José. I told him it wouldn't be of much use to try, because I did not think that I would be able to do any good; but after we were able to get it I would go in and help him at any time, from the fact that I thought lighting was too high in San José. I would help him at any time. The time came around in my opinion. I went to San Francisco and saw Mr. Boyant. Now, I said, I think we can get a charter to get electricity into the town to light the city. He said he wanted us to go in with him, and we made figures and calculated about what this plant would cost us. I think we figured this plant would cost us about \$150,000; I would not be certain, maybe \$125,000. We got to figuring that we could light the city for that, and we would build this plant to light the city for that amount of money. We made a bargain that we would pay at the rate—I think it was \$25,000 for the stock. Now, it has cost us more money than that, because we have had some assessments, I think. That is my recollection, and we went to work upon that understanding. I not only saw Mr. Boyant, but I think I saw some other members of the company; I think Mr. Haggin and two or three other gentlemen, upon that.

Q. Was it not the understanding that you were to get \$25,000 worth

of stock, and didn't you get that allowed for your influence with the Council? A. It was not the understanding.

Q. Wasn't that done? A. I do not remember that, either. I remember we pooled our San José stock.

Q. You say you do not remember; that is your answer? A. I would like a justification to myself to explain about that stock. It wouldn't take me five minutes.

MR. BLEDSOE: You say you came here prepared to testify that Mr. Edwards' reputation in San José for truth, honesty, and integrity is good? A. Yes.

Q. You have heard that reputation discussed in San José, or you have heard it talked about? A. I have heard him talked about as a good man and citizen, and all that sort of thing. You know that a man's reputation is not generally discussed.

Q. Was it not common talk in San José at one time that a combination was formed wherein Mr. Edwards was one of the parties, and Mr. Rea another of the parties to influence the City Council to give them franchises for lighting the city? A. There was a little clique called them—

Q. Wasn't it a common talk in San José among the citizens of the town at that time? A. No, sir.

Q. Was it not common talk among the citizens of San José at one time that there was a corporate combination formed, with Mr. Edwards as one of the parties and Mr. Rea as the other, to influence the City Council to give them a charter to light the city? A. No, sir. For instance, if you will allow me to put it in this shape, no matter what any man would do in San José or any other time, somebody would impugn his motives. I went into this lighting business for no other purpose in the world only to lower the cost of light. I didn't go into it to make a dollar, and didn't expect to make a dollar, and don't want to make a dollar. But we have reduced the price of light from thirty to fifty per cent. We went into it, and took Mr. Edwards in because he was acquainted with the business.

Q. Mr. Edwards' reputation for truth, honesty, and integrity as it is spoken, you say it was not the common talk in San José at any time? A. No, sir.

Q. You stated awhile ago that you never heard the reputation of Mr. Edwards discussed in San José. Now, if you haven't ever heard his reputation discussed, how can you come here before this committee and testify what his reputation is? A. Now, I will illustrate by Mr. Richards here; I never heard them discuss his reputation, but yet in his business way, in a business way we will say, he is a very square man. He is a truthful man.

Q. Then you have heard Mr. Edwards talked about? A. In that way.

Q. You have heard him talked about? A. Yes.

Q. You have heard people say he was truthful? A. Yes, precisely.

Q. Then you do not mean what you said, do you? Have you heard people of San José talk about him? A. I have heard it like I have heard it about Mr. Ryland, or Mr. Murphy, or any of those men. Just the same as I have heard the remarks they were good men.

Q. Do you base your testimony before this committee about what you have heard people say about him? A. What I know myself.

Q. Leaving out of consideration what you know yourself, would you

still be prepared to testify that you know what his reputation was? A. I have heard it, certainly.

Q. And that it was good? A. It was good.

MR. BULLA: I believe you stated you are a Republican? A. Yes.

Q. Is it not a fact that down there there are two factions among the the Republicans? A. There are the soreheads, office seekers who did not get in office, and some of them have been in office fifteen years, and because they cannot have office all the time they are mad.

Q. How are they distinguished? A. They are called purifiers.

Q. What is the opposite faction called of the Republican party—what are they generally called down there? A. They are called boodlers; those are the men that do all the public improvement in San José, and the silurians stand back and run a two-penny paper, and call them boodlers—and they have a higher, or six-bit paper.

Q. I don't care anything about a six-bit paper—how are the other side designated? A. They are the men that do all the improvement.

Q. How do they designate that faction that is opposite to the so-called purifiers? A. This paper that was paid by those parties call them boodlers. Mr. Tisdall, and a few men, they call them boodlers, and they made it a joke, and they call it boodlers.

Q. You belong to the boodlers? A. Yes, I am a boodler, and that is being classed with honest men.

MR. BLEDSOE: Mr. Rea and Mr. Edwards belong to that faction, also? A. That is what they said.

S. N. RUCKER.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you live? A. San José.

Q. How long have you lived there? A. All my life, about thirty years.

Q. Are you engaged in business in San José? A. I am.

Q. How long have you been engaged in business there? A. Seven years.

Q. In what business are you engaged and in what business have you been engaged for the last seven years? A. Carpet and furniture business.

Q. Under what name? A. Rucker Bros.

Q. Prior to that time had you been in the city? A. Not on my own account.

Q. Do you know H. J. Edwards? A. I do.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I think I do.

Q. What is his reputation, good or bad? A. I should say it was good.

Q. Do you know John D. MacKenzie? A. I do.

Q. Do you know Mr. MacKenzie's reputation in the community for truth, honesty, and integrity? A. I think I do.

Q. What is his reputation, good or bad? A. Well, I have heard a great many people pronounce it good, and perhaps a great many that would pronounce it bad.

Q. To the best of your judgment, what is his general reputation—good or bad? A. I refer to his personal reputation.

MR. CHAIRMAN: State whether his reputation is good or bad in the community in which he lives for truth, honesty, and integrity. It must be one way or the other. A. Well, some people may have one opinion and give a man one reputation, and some another. Mr. MacKenzie, to the best of my knowledge, has got a number of enemies, and his enemies give him a bad reputation. I do not think anybody else except his enemies do give him a bad reputation.

Cross-Examination.

MR. MCPHKE: Do you know whether his enemies are respectable people or not? A. Well, I do not. Perhaps some of them are respectable. Yes, I believe they call them respectable.

Q. A great many of them are the best citizens in San José, are they not? A. I do not know as to that.

Q. Don't you know this to be a fact? A. Well, probably some of them are; they are good citizens, considered as such, and his enemies are men who have been opposed to him politically.

Q. Do they not oppose him politically, and are they not his enemies on account of what they claim to be the manner in which he runs politics or assists to run them? A. They probably claim that.

Q. Hasn't he the reputation down there of being a political manipulator and a man that will go to extreme lengths in politics? A. He has among a certain class of people, yes.

Q. Hasn't he the reputation down there of being unscrupulous as to it? A. I do not think so. I do not know that he has.

Q. Hasn't that been charged against him down there? A. It has.

Q. And you have heard it charged against him down there that he bought votes on election day? A. I heard something of the kind.

Q. Have you heard it talked down there about his being brought before the Grand Jury for that? A. No.

Q. About his being arrested for buying votes? A. No.

Q. He is a very intimate friend of Mr. Rea's? A. I think he is.

Q. Was he his private secretary? A. I do not know.

Q. Mr. Rea and Mr. Edwards and Mr. MacKenzie are very intimate associates? A. I think so.

Q. Now the faction or factions that have been formed down there in San José recently, is Mr. Rea and Mr. MacKenzie and Mr. Edwards on one side, and a great many respectable people have gone on the other side? A. Mr. Rea, MacKenzie, and Edwards alone?

Q. No, with their friends? A. Yes, that is true, to a certain extent.

Q. The fact is the city of San José is politically for Rea and anti-Rea men? A. Well, it is not so badly divided. Of course, there is quite a number of dissatisfied persons in San José who have made it appear so to the public outside of San José.

Q. Hasn't that been brought about by the charges made against Edwards, MacKenzie, and others, on account of their political methods? A. These people that I refer to have charged that, yes.

Q. Has that not been charged, and hasn't that been common talk that Mr. Edwards had sought by fraudulent means to influence the City Council down there in the lighting contracts? A. No, sir, not to my

knowledge. The only charge I know of of that kind was made by a newspaper in San José.

Q. And the contract was obtained in favor of Mr. Edwards? A. Yes.

Q. In that trial is it not a fact that a great many reputable citizens in San José took the witness stand and swore that his reputation in that community was not good for truth, honesty, and integrity? A. To the best of my knowledge—

Q. I asked if you did not hear that? A. Yes, quite a number did say that, but I do not think that they could be considered the best people in the community by any means, by a large majority—men whose whole lives have been failures, and dissatisfied with themselves and everybody else.

Q. Who were some of them? A. Well, there was, I think, Mr. Williamson, and Mr. Phelps was another, Mr. Henry Phelps.

MR. CHAIRMAN: You cannot state, then, as a matter of fact, what this man's reputation is in the community—general reputation? A. Of course, as I said a moment ago, I consider it is good, because a majority of the people—the best people in San José, I think would give Mr. Edwards a good reputation.

MR. MCPIKE: Do you swear now that Judge Williamson was a witness in the libel suit? A. I do not. That is my recollection, I would not be positive.

Q. Were you there during the trial? A. I think I happened in one day for about five minutes.

Q. Did you see Judge Williamson in the Court-room? A. I might be mistaken about that.

Q. Haven't you been told that he was a witness down there by people who came up here, and who knew Judge Williamson was a witness? A. No, sir.

Q. Then, on what did you form your opinion? A. I think I formed my impression from the fact that he testified here the other day, in this investigation.

Q. Were any of the gentlemen who came here as witnesses to testify in favor of Mr. Edwards, witnesses in that case? A. The case of Edwards against the Publishing Company?

Q. Yes. A. Yes.

Q. Were you one of them? A. No; I do not think I was a witness in that case. I believe I was a witness in that case.

Q. And a witness for the purpose of testifying to the reputation of Edwards? A. Yes.

Q. And this is the second time you have been called upon for that purpose? A. This is the second time.

Q. Who have you heard discuss Mr. Edwards' reputation besides these gentlemen that came here? A. I have heard a great many.

Q. Can you name any? A. Besides these people that are here?

Q. Yes. A. Yes, I think I could; D. B. Murphy.

Q. You know he was subpoenaed as a witness? A. I heard so.

Q. Did you see the papers? A. No, sir.

Q. When did you hear Mr. Murphy say anything about Mr. Edwards reputation. A. I am speaking now just from memory. I think at the time Mr. Edwards sued the Publishing Company—I am not sure, but my recollection is that it was in the Santa Clara Club, and quite a number of persons there. I couldn't name all of them.

Q. Was Mr. Edwards present? A. No, sir; I am positive he was not.

Q. Is Mr. Murphy a member of the club? A. Yes.

Q. Mr. Edwards? A. Yes.

Q. Who else? A. I have heard Mr. Tisdall speak of Mr. Edwards.

Q. He was subpoenaed as a witness? A. I do not know that he was. I have heard that he was.

Q. Isn't he one of the parties who it was charged had obtained two hundred and fifty shares, twenty-five thousand dollars' worth of stock in the Electric Improvement Company for their influence with the City Council, of whom Mr. Edwards was one, that received twenty-five thousand dollars' worth of stock? A. No, sir.

Q. Have you heard that in San José? A. I have heard something about that.

Q. Did you read the papers? A. Yes.

Q. It was charged? A. Yes, it was charged by a paper that would charge most anything. That was the paper Mr. Edwards sued for libel.

Q. Wasn't that the charge that it was sued on? A. I am not positive.

Q. But you know that has been published in the papers in San José? A. I am almost positive, gentlemen, if I had time, I could probably give twenty or twenty-five, maybe a hundred names of the best citizens of San José that would give Harry Edwards a good reputation.

MR. BLEDSOE: Have you heard that many? A. I couldn't name them now. I really think during that trial I heard fifty men during that time give Mr. Edwards a good reputation.

Q. Have you heard his reputation discussed since that time? A. Very little until this came up.

Q. Have you heard it discussed since this came up, in San José? A. Yes, a little.

Q. Do you base your testimony as to his reputation being good as to what you have heard people generally say about him in San José? A. Yes.

MR. MCPIKE: You are an intimate friend of Mr. Edwards? A. Yes.

Q. Also of Mr. MacKenzie? A. No.

Q. More so with Mr. Edwards? A. I am very friendly with Mr. Edwards, yes, and very friendly with Mr. Rea.

Q. They supported you when you ran for office? A. I do not know whether they did or not. Only Mr. Edwards told me he did not. He told me he couldn't vote for me, and would not feel very bad if I was elected.

Q. After you were elected you were pretty friendly? A. How do you mean; I have always been friendly?

Q. You were very friendly to them? A. In what way?

Q. Didn't you award a contract to them? A. Never in my life.

Q. Did you assist in awarding a contract to the Electric Improvement Company for the sum of \$35,000 which the City Attorney advised against? A. I did not. I signed a warrant as Mayor of the city of San José.

Q. And that you did on account of your friendship for Mr. Edwards? A. I did nothing of the kind.

Q. Wasn't it charged in San José it was for that reason? A. No, I do not know as it was charged just in that form. This paper that Mr.

Edwards sued claimed at the time that I had no right to sign the warrant.

MR. RICHARDS: I understood you to state that Mr. MacKenzie had enemies in San José who assailed his reputation. A. Yes, I am satisfied there are quite a number.

Q. And Mr. MacKenzie has a good many friends in San José to sustain his reputation? A. A great many friends.

Q. Are those people among the respectable people of San José? A. They are.

MR. BLEDSOE: What are your politics? A. I am a Democrat.

Q. Were you nominated by the Democratic convention when you ran for office? A. I was—yes.

Q. Do you know what Mr. Edwards' politics are? A. Yes; Republican.

Q. Do you know what Mr. Rea is? A. Yes; Republican.

Q. Do you know whether or not either Mr. Edwards or Mr. Rea took any part in the Democratic convention in San José in the nominations? A. It has been charged against them by this same concern.

Q. I am asking you if you know? A. Not to my knowledge I do not know that they ever took any part.

Q. Do you know whether or not Mr. Rea supported your candidacy when you were running for Mayor? A. I do not know whether he did or not. All I know is that he told me that he believed the fight was between the independent candidate and myself.

Q. Was there a Republican candidate? A. He was Mr. Rea's choice, I know, but he didn't think he would be elected, and he preferred me to this other man.

Q. You have testified that you are an intimate friend of Mr. Edwards, and that you are very friendly to Mr. Rea? A. Yes.

Q. Now, is that friendship based on any political reason? A. None. I was born in California and the same city Mr. Rea was born in, and have known him all my life, and our families have been rather intimate.

Q. Mr. McPike has drawn from you some testimony as to your right to draw a certain warrant? A. Yes.

Q. Was that right ever sustained or rejected by a Court? A. No, sir; and I will say in that connection that the charge was made and I signed the warrant at ten o'clock in the morning, and that these parties—that is, all the row between these two lighting corporations, and the other corporation—the San José Light and Power Company—consulted their attorneys, and I told the City Treasurer to hold the warrant until they were satisfied, and he did so. He held the warrant until they were satisfied they could not accomplish anything in the Courts, and then he paid it.

Q. Was any injunction served? A. No, sir; I told them I would give them all the time they wanted.

Q. Is it a fact that in San José political contests for the last few years have turned upon the rivalry between these two lighting companies? A. Not entirely, but they have a whole lot to do with politics.

Q. Haven't they been a prominent factor in politics in San José? A. Yes, I think they both have.

Q. And men who take any important part in politics have arrayed themselves on one side or the other of the fight? A. They get into a

fight, and candidates for office and these people get on one side or the other. I do not think either of them have ever been successful in nominating a candidate. There might have been one or two instances, but they never have been very successful.

Q. When you were running for Mayor do you know what position the San José Light and Power Company took on your candidacy? A. I know they were opposed to me.

Q. Was Mr. Adam Reihl at that time connected with the Light and Power Company? A. I think he was President at that time of the company.

Q. How long ago since you were a candidate? A. Three years ago in April.

Q. Has the action of those two corporations remained about the same from that time up to the present? A. So far as the officers and stockholders are concerned?

Q. Yes. A. I do not know, but I think they are about the same. The officers are changed some. Mr. Reihl is not President now.

Q. In any of those factional fights between those two corporations, what side have you generally taken in discussing the matter with your friends at the club; what side have you generally taken? A. I have never taken either side. I probably believed one was worse than the other.

Q. Then you testify, do you, that your friendship for Mr. Edwards is based upon reasons entirely outside of this corporation? A. Entirely outside.

Q. Or politics? A. Yes, entirely outside. I have known Mr. Edwards quite a long time. I have always liked him, and have been very friendly with him, particularly the last five or six years.

Q. Would your friendship bias you in any manner in your testimony here to-night? A. No, sir; none at all.

MR. BULLA: You say that there are factions which have grown up out of the rivalry of these two corporations? A. Yes.

Q. Isn't it a fact also that there are factions in the Republican party down there? A. Yes.

Q. How are those factions generally designated by the people down there? A. Well, I have heard it designated in different ways; I have heard one side called boodlers and another side called purifiers.

Q. Who were the purifiers? A. They were the people who were mostly arrayed on the side of the Light and Power Company.

Q. And the other side the boodlers? A. Yes, those who were called boodlers are the ones on the other side.

MR. BLEDSOE: Who gave them that designation—was that given by the newspapers or by the people generally? A. By one newspaper; there was one newspaper that called the members, or friends of the members of the Electric Improvement Company, boodlers, and then there was another paper called these other people purifiers.

Q. And those names have by common consent been adopted by the public down there? A. After a fashion, yes. Things are not half so bad as they are painted to be, nor one tenth.

MR. BLEDSOE: Are there any men in San José who have not held office or been candidates for office? A. I think there are some; there are no more candidates there than in any other community.

MR. RICHARDS: You have spoken of three candidates down there for

Mayor at the time you were a candidate. I will ask if one of them was Colonel Bennett? A. He was the Republican candidate.

Q. Do I understand that Colonel Bennett was Mr. Rea's selection for the office? A. I knew, and in fact Mr. Rea told me himself, that he favored Colonel Bennett.

Q. As Mayor of the city, when these two lighting companies came before you, I will ask whether you did not in more than one case decide against both companies in cases where your decision became important? A. I worked for a year and a half to try and settle this difficulty, and I did decide, and I vetoed one proposition that would favor both of them. The council was divided, and I drew up a set of resolutions and they signed them, and after they got to their friends they would not stand by our agreement.

Q. And you acted and voted against the interests of both of these companies and in the interests of what you deemed you owed to the public at the time? A. Yes.

M. PHILLIPS.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you live? A. San José.

Q. How long have you lived there? A. Off and on, between there and San Francisco, about twenty-four years—since boyhood.

Q. You have property interests in Santa Clara County? A. Yes.

Q. What is your business? A. Well, I am dealing in real estate of my own, mostly.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known him? A. About seven or eight years, or six or seven.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do.

Q. What is it? A. Very good.

Q. Do you know John D. MacKenzie? A. I do.

Q. How long have you known MacKenzie? A. I have known him since childhood.

Q. Do you know his reputation in the community for personal truth, honesty, and integrity? A. I do.

Q. What is that reputation? A. Very good.

Cross-Examination.

MR. McPIKE: You have lived in San Francisco for awhile? A. Yes.

Q. You were employed on the mail dock at one time? A. Yes.

Q. Between 1878 and 1886? A. I was on the mail dock from 1880 until 1887, I think.

Q. Do you know a man by the name of Grant in the employ of the Pacific Mail Company? A. Yes.

Q. Did you know Mrs. Slicer, the Inspectress? A. Yes.

Q. Did you know Mr. Griffin was one of the stewards on one of the steamship vessels? A. Yes.

Q. Were you ever at Mrs. Slicer's house? A. No, sir.

Q. Well acquainted with her? A. No, excepting meeting her on the wharf.

Q. How long have you known Mr. MacKenzie? A. Since childhood almost; I do not know how many years; may be twenty-two or twenty-three.

Q. Have you ever heard his reputation discussed? A. Well, I never heard it discussed until lately—until this investigation.

Q. This investigation? A. Yes.

Q. All that you know about his reputation, then, you have learned since this investigation began? A. I know a great deal more about his reputation than that, because I know the man.

Q. You got your idea of his reputation from your own dealings with him? A. Yes, and from people seeing him around, the same as I would give Mr. Richards a reputation, or anybody else seeing him every day or every few days, and knowing about him and his actions.

Q. By his actions and what he says to you, and the dealings with you, you formed your opinion of him? A. Yes, I found him a pretty good, loyal fellow, that I would believe and I would trust, and would go on his bonds.

Q. Are you on his bonds? A. No, sir; I never was asked. I would cheerfully go on his bond; I think he could get a hundred thousand dollar bond easily.

Q. For what purpose? A. Any purpose. If he was an officer any bond that might be exacted by the State; I believe he could get a bond for \$100,000. I knew his father, mother, and sisters. His father is dead now. Very highly respected in the community. His mother is a fine old lady, and his sisters and brothers are very highly respected in San José.

Q. Do you belong to the same political party with Mr. MacKenzie? A. I am a Republican, yes.

Q. You have attended conventions there? A. Yes.

Q. A delegate? A. Sometimes.

Q. Are you generally what is known as a Rea delegate to a convention? A. No, sir.

Q. You are opposed to Mr. Rea? A. At times I have been.

Q. How lately? A. Well, not lately. I cannot say that I am opposed to Mr. Rea or for Mr. Rea. I own myself.

Q. You are an intimate friend of Mr. Rea? A. No, sir.

Q. Of Mr. Edwards? A. Well, more of Mr. Edwards than Mr. Rea.

Q. But you are quite intimate with Mr. Edwards and Mr. MacKenzie? A. Yes, quite intimate. That is, as far as personal intimacy on the street. I do not visit either of their houses, neither do they visit mine.

Q. San José is divided up in political factions known as Rea men and anti-Rea men, or what are they called? A. That might answer. You may say Rea men to a certain extent and yet a great many men might be with Rea, might be identified with him, and would not care for him.

Q. Which side do you belong? A. I have friends in both factions. I do not consider myself belonging to the Rea faction. But I incline to the Rea faction occasionally. I vote for the best man.

Q. At the last city election which took place did you array yourself on the Rea side or with the citizens' movement? A. I arrayed myself on the side of the Republican party.

Q. Will you answer my question? A. You bet. That is an answer. I arrayed myself on the side of the Republican party.

Q. You answer the question? A. I arrayed myself on the side of the Republican party.

Q. Was Mr. Rea on that side? A. I cannot tell you, sir.

Q. Don't you know? A. I think he was.

Q. Don't you know that he was? A. I don't know anything unless I am confident of it.

Q. Was Mr. MacKenzie? A. I have every reason to believe that he was.

Q. You know that Mr. MacKenzie was? A. Yes.

Q. And Mr. Edwards? A. Yes.

Q. Were you ever interested in any opium case while you were on the mail dock in San Francisco? A. I have been interested I think in seizing opium.

Q. Were you not discharged from the dock down there because you interfered with inspecting officers who were endeavoring to seize opium? A. I never was discharged from the place in my life. I hold a recommendation from every man I ever worked for, and if he is dead to-day his family are my friends.

Q. Then you say you were not discharged for that reason? A. I was not discharged for that reason, or for any other reason. I was not discharged.

Q. You were not involved in 1888 in San Francisco, while you were on the mail dock, in any opium complication? A. I was not.

Q. You owned what is known as Chinatown at San José at one time? A. I was interested in some land on which some Chinamen had built. They leased the land, and they own the buildings; they own the town, and my wife and I own the land.

Q. Who did you ever hear speak about Mr. Edwards' reputation besides these men who came up here as witnesses? A. I was surprised to hear that his reputation was discussed at all in that regard.

Q. Will you kindly answer my question; do you understand the question? A. Yes.

Q. Please answer it? A. I was surprised, and I am surprised that his reputation was discussed at all, and I did not know that anybody had discussed it.

Q. I will ask the Chairman to instruct the witness to answer my question? A. Well, I say, Mr. Chairman, that I do not know that I ever heard his reputation discussed.

MR. BLEDSOE: Then, if you have not heard his reputation discussed, how do you come before this committee, and state that you know what it is? A. Because I know a thousand or more people in San José; I have dealt with these people, and have read about them, and know them and come together friendly.

Q. You know what general reputation means, you know that it means what people generally say about him where he lives? A. Yes.

Q. You have stated that you have heard Mr. Edwards' reputation discussed—now then, why is it that you come before this committee and testify that you know what his reputation is for truth, honesty, and integrity? A. Yes.

Q. When you say that you never heard it discussed? A. I can in answer to that say instead of being discussed, I mean called into question.

Q. Have you ever heard it talked about—have you ever heard his reputation for truth talked about in San José? A. I do not know that I ever heard his reputation brought up in a questionable manner. I know that he has many friends.

Q. Have you ever heard Mr. Edwards' truthfulness talked about in San José, either one way or the other? A. I have not.

Q. Then, as a matter of fact, you are not prepared to testify one way or the other about his reputation? A. You do not hear the chastity of a woman discussed, and yet, at the same time, you take it for granted.

MR. CHAIRMAN: Then, as a matter of fact, you are not prepared to state what his reputation is? A. As a matter of fact I know the man to be a good man. I know his neighbors. I know who his friends are in San José, and everybody that deals with him.

Q. You know or do not know the man's reputation for truth or integrity in the community in which he lives? A. Yes.

Q. What is it? A. It would be that a man conducted himself in a proper manner as a good citizen, and goes about his business and lives at peace with people, and minds his business and does the fair thing.

Q. His reputation is established by what people say of him—what is said about him in the community in which he lives? A. I never heard the man's reputation called into question.

Q. Did you ever hear anybody say he was a good man? A. Lots of people. I like Harry Edwards.

Q. The committee wants to know whether his reputation is good for truth and integrity, and if you know it? A. I will say that I do.

Q. Now, if you know what that is, state to this committee what it is; whether good or bad? A. Good. I say I never heard his character called into question.

MR. McPIKE: Do you keep yourself generally informed about local matters down there in San José? A. I take every paper in San José.

Q. Do you know anything about a libel suit that Mr. Edwards had down there in San José? A. Yes.

Q. With the "Times"? A. Yes, as far as I saw in the paper.

Q. You knew what took place, generally? A. Yes.

Q. You know that in that case a number of very respectable gentlemen in San José took the witness stand and swore that Mr. Edwards' reputation for truth, honesty, and integrity was not good? A. I do not know.

Q. Didn't you see that stated in the paper? A. No, sir; I do not remember.

Q. You are not well informed of that? A. No, sir; I know he got judgment; I know that much about the case; I know that Edwards was given a judgment.

Q. Then there are a great many things that you are informed of? A. Yes.

Q. Had you ever heard it charged down in San José that Mr. Edwards used undue means in obtaining contracts from the City Council as a member of the Electric Improvement Company? A. No; that might have been in the papers.

Q. You have seen that in the papers? A. Possibly.

Q. Have you or not? A. I cannot say positively; I say possibly. I would not be positive.

Q. You do not remember? A. I do not remember.

Q. Don't you know that, as a matter of fact, that the Citizens' movement in San José, which resulted in the election of the present Mayor Schilling, was brought about by charges that were made and circulated broadcast in San José against Mr. Edwards and some other gentlemen whom it was supposed had unduly influenced the City Council in obtaining contracts for the Electric Improvement Company? A. I do not understand your whole question. That might have been the alleged reason. If it was so I didn't know it.

Q. I want to know if you do not know it to be a fact, and those charges were made, and that is one of the things that brought about the Citizens' movement? A. I think those are the alleged charges. I think the Citizens' movement was brought about more by a union of some elements of the Republican party and the Democratic party.

Q. It was understood there that some of the Democrats stood in with Mr. Edwards and some of the Republicans? A. No.

Q. Did not the rest of the Democrats and the rest of the Republicans start what is known as the citizens' movement? A. I think it was the Democratic party formed a coalition with dissatisfied Republicans, and they made a citizens' movement, and they made a hue and cry about this thing.

Q. And carried the election? A. I think they elected their Mayor. I think they elected their Mayor by fifteen, twenty, or thirty votes—a very small majority.

Q. Beat the other two candidates? A. Yes, there were two other candidates—a straight out Democrat and a straight Republican, and the Republican candidate beat the Democratic.

Q. The Democratic candidate got a very small vote? A. Yes, it showed that the dissatisfaction was mostly in the Democratic party.

MR. RICHARDS: I understood you to say that you have lived in San José for a long time? A. Yes.

Q. You are acquainted with a great many people down there? A. Yes.

Q. And with a great many people who are acquainted with Harry Edwards? A. Yes.

Q. Have you ever heard these people with whom you are acquainted speak favorably of Mr. Edwards, as to his honesty, and truth and integrity in the community? A. Well, I haven't heard it brought up exactly in that way, Mr. Richards.

Q. State how you have heard it brought up? A. Brought up that Mr. Edwards is a good business man; a reliable man, and a good fellow, and all that sort of a thing; that is, a man that could be depended upon.

Q. Have you heard that matter stated promiscuously in San José? A. Yes, lots of times that way, but I never heard his character called in question.

Q. That is, you mean you never heard it discussed where two men got together, where one said Harry Edwards was disreputable, bad and dishonest, and the other thought it was good? A. I never heard anybody say he was dishonest. I have heard a great many express their liking for him, a reliable, a good man, and as a good man in the community. They don't discuss people that way down there; they don't have the lines that way, he is a bad man, and there is a good man, and that man was honest and another honest.

MR. BLEDSOE: Have you heard a good many people say he belonged to Jim Rea's ring? A. Yes, I have seen that in the paper.

Q. Have you heard a great many people say that he belonged to Jim Rea's crowd of politicians? A. I couldn't tell.

Q. Have you heard a great many people in San José say that Edwards belonged to Rea's faction? A. I guess I have.

Q. What do you know about it? A. I cannot call to mind a great many people. The impression on my mind is, I have heard a number of expressions.

Q. Isn't it a fact that it is common reputation in San José that Edwards is a kind of lieutenant of Mr. Rea in politics, and intimately connected with Rea in politics? A. Yes.

Q. That is common in San José? A. Yes.

Q. Is it also common reputation in San José that Edwards, and Rea, and MacKenzie occupy a position in the San José Electric Improvement Company opposed to the Light and Power Company, in which are Adam Reihl and other men? A. I do not think MacKenzie has anything to do with the Electric Light Company.

Q. Then Edwards and Rea? A. Yes.

Q. Isn't it common reputation that Edwards and Rea occupy a position, both in the company and in politics, as opposed to that company? A. Yes.

Q. Always? A. Yes.

T. W. HOBSON.

Called and sworn, testified as follows:

MR. RICHARDS: You live in San José? A. I do; yes.

Q. How long have you lived there? A. I was born there.

Q. You are in business in San José? A. Yes.

Q. In what business? A. Clothing, merchant tailor; in the hat business, general outfitter.

Q. How long have you been engaged in that business? A. As a clerk, I began business twenty-five years ago, and for myself since 1879.

Q. You have one of the largest clothing establishments in the city of San José? A. Yes, one of the largest on the coast.

Q. Do you know H. J. Edwards? A. I do, yes.

Q. How long have you known him? A. Well, ever since he came to San José, I should think it was twelve years.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do, yes.

Q. What is that reputation? A. It is good.

Cross-Examination.

MR. McPIKE: Have you ever heard Mr. Edwards' reputation discussed? A. Well, in what way do you mean?

Q. In any way. A. Yes, more especially since this case I have heard it more than before.

Q. Never heard it discussed before this case? A. Well, of course, about his electric lights up before the Council.

Q. That was quite a bitter fight down there in San José between Edwards on one side and his friends, and a good many citizens? A. Yes.

Q. It was charged down there, and spread broadcast, that Mr. Edwards and some of his associates were unduly influencing the City Council and obtaining contracts, which they had not obtained from the City Council, and getting more money from the taxpayers than they were entitled to—wasn't that the common talk around San José? A. I believe it was talked a great deal.

Q. And that talk is what led really to what is known as the citizens' movement? A. I do not know; there was a whole lot of things; rather the dissatisfaction of office holders.

Q. You do not know whether dissatisfaction of office holders? A. People who did not get what they wanted.

Q. Those charges were made in the campaign, and talked about a great deal? A. Yes.

Q. During that canvass you frequently heard Mr. Edwards there, among others, charged with having unduly influenced the Council, and votes were obtained on that ground against them? A. I do not think that I heard him charged that way.

Q. What way did you hear him charged? A. Well, of course, in the fight with the Council they claimed—that is, the other party—the other light and power company wanted to get a contract, and they would furnish light for less than the other had formerly lit the city for, because they forced the company to come down.

Q. It is also talked that Mr. Edwards had obtained a contract from the City Council for twelve thousand dollars more than it could be obtained from another company? A. I do not remember anything like that.

Q. Isn't it understood that Mr. Rea belonged to what is known as the Rea faction, or the Rea gang, in San José? A. Well, in politics I take no part at all. In fact, at our place of business we never talk politics. I take no part in it—simply go and vote on the day of election.

Q. You say you are in the real estate business? A. No, sir; the clothing business.

Q. What other business have you? A. Nothing else.

Q. Never done anything else? A. No, sir; I am interested in orchards and interested in bank stock and interests of that kind.

Q. Do you know W. B. George? A. Yes.

Q. Did you ever have any business with W. B. George? A. Yes; he trades in my house; a customer of mine.

Q. Any business connection with him of any kind? A. No, sir.

Q. Never? A. No, sir.

Q. Did you ever run a faro bank there with him? A. No, I did not.

Q. Who have you heard since you came from San José discuss the reputation of Mr. Edwards? A. I have heard no one except the party of us that came up.

Q. Are not these gentlemen that came up here about the only ones that you ever heard mention Mr. Edwards? A. No, sir.

Q. Who else did you ever hear mention him? A. I have heard people.

Q. Who are they? A. Well, I have heard Mr. W. A. Rodgers, foreman in the store.

Q. When? A. Since this case come up.

Q. Where? A. In my store in San José.

Q. He is a friend of Mr. Edwards, is he? A. Not particularly so. I suppose he is an acquaintance.

Q. Edwards deals at your store? A. He does, yes.

Q. How long has he dealt at your store? A. Ever since I have known him, twelve years.

Q. And therefore you feel very friendly to him? A. I do.

Q. Because he is a customer? A. Because he is a customer, and I know him, and I think he is a good man.

Q. The fact that he is a customer of yours, and you have known him for a good while, and your friendship for him, is that what you base your judgment on? A. No, sir.

Q. What do you base your testimony on? A. Not on that alone.

Q. Because you are his friend you come here and testify? A. If he wanted a favor, I would grant it.

Q. And so you came here to help Harry Edwards out? Did you talk that among yourselves coming from San José? A. I have not.

Q. Have you heard the rest? A. I didn't talk about the case hardly at all. We were kind of surprised at the testimony given by several men that came up here.

Q. What testimony were you surprised at? A. When they said they would not believe him under oath.

Q. Don't you know in that libel suit that a number of citizens took the witness stand and said they would not believe him under oath? A. No, sir.

Q. Wasn't that talked about and circulated all over San José? A. It might have been.

Q. You being a friend of Mr. Edwards, and he your customer for twelve years, and he frequently came to your store, and you never heard that? A. I do not remember it.

Q. You heard all these charges that were made against him on election day, and all this about the City Council, why were you surprised when you heard the witnesses come up here and testify? A. It is pretty hard to say that you wouldn't believe a man under oath.

Q. Where is your store? A. From forty to fifty west end Santa Clara Street.

Q. You see a great many people in San José? A. Yes.

Q. Did you think it strange that charges were made? A. I didn't pay any attention to it. I don't pay any attention to politics. I believe a man in politics, his enemies would say most anything about him, and I didn't pay any attention to politics, one way or the other.

MR. BLEDSOE: What are your politics? A. I am a Republican, sir.

Q. You say Mr. Edwards is a customer of yours? A. Yes.

Q. Have you talked over political matters with Mr. Edwards? A. No, sir.

Q. When he came into your store to buy goods? A. No, sir.

Q. You have known, have you not, that there is a certain faction in politics in San José called the Rea faction? A. Yes, I have heard that.

Q. And his common reputation in San José, that Edwards belongs to that faction? A. I have heard it mentioned that he belonged to that faction.

Q. And have you heard it mentioned also that he is a kind of lieutenant, in politics, of Mr. Rea, and acting with Mr. Rea in his political aspiration? A. I have never heard it mentioned only in connection

with the Light and Power Company. I did not know that he was in politics outside of that.

Q. There is a bitter feeling between those two power companies, or electric light companies? A. There seems to be; yes.

Q. And that has existed for some time? A. Yes.

Q. And Mr. Rea and Mr. Edwards have been on one side and Mr. Reihl and his associates on the other? A. Yes.

Q. And nearly all the business men in San José have taken one side or the other of that discussion—their sympathies have gone to one side or the other? A. A good many; yes.

Q. Because it affected their property interests to a more or less extent? A. Well, I do not know.

Q. Their financial interests, by being made to pay a higher or lower price for light? A. I do not know as there was much difference in the price. A good many were not satisfied with the lights they were getting originally.

Q. Which side did you take? A. I was neutral. I took neither side. I buy light from both companies. I divide my business between them.

Q. Have you done that for some time? A. I have done that always. My store is divided into departments, and one company lights about half of my store and the other company half.

Q. Have you ever been a delegate to a Republican convention? A. I was elected once or twice, but never attended.

Q. Recently? A. I really don't remember the last time I was elected.

Q. Were you a member of the County Central Committee? A. No, sir.

Q. Or the City Committee? A. No, sir.

Q. Have you ever been a candidate for office? A. No, sir.

Q. And you say you have heard people talk about Mr. Edwards' reputation for truth? A. Yes.

Q. Have you heard a great many people say that they thought that he was a man who could be believed? A. I think everybody except some enemy would say so.

Q. Have you heard people say that they would believe him? A. Yes, I heard a number express themselves that they were surprised to think that anybody would not believe him under oath.

Q. Have you any interest in either of the power companies? A. I have not.

Q. Do you own any bank stock? A. I do own some bank stock.

Q. What bank? A. The First National Bank.

Q. Does Mr. Rea own any stock? A. I do not know.

Q. Is Mr. Edwards a stockholder? A. I do not think he is.

W. A. BOWDEN.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you live? A. San José.

Q. How long have you lived there? A. Since 1876; May of that year, I think.

Q. Your occupation is what? A. I am engaged in the practice of law.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known him? A. I should say from ten to twelve or thirteen years.

Q. Do you know the general reputation of H. J. Edwards in the community for truth, honesty, and integrity? A. Yes, I think I do.

Q. What is that reputation? A. It is decidedly good.

Q. Do you know Johnnie MacKenzie? A. I have known Mr. MacKenzie personally for four or five years, not longer than that, I think.

Q. Do you know the general reputation of John B. MacKenzie there for truth, honesty, and integrity? A. I think so.

Q. What is that reputation? A. I should say it was also good.

Cross-Examination.

MR. McPIKE: What party do you belong to politically? A. The Democratic party.

Q. Which wing of the Democratic party do you belong to, the one that joined the citizens' movement, or the other? A. Well, I never heard them called wings before. There has been a little disagreement among the parties who have been active in politics in Santa Clara County. When the disagreement started I was a delegate to one of the conventions; I think I was on both tickets at that time. A short time after that there was another convention held for some other purpose, and I was on both tickets, if I recollect, at that time. I wouldn't state that positively, however, but at any rate I was in both conventions, so I could not state that I belong to either of the wings, as you call them.

Q. At the election there were three parties in the field; one the Citizens' ticket, a Democratic ticket, and a Republican ticket, at the last city election? A. Yes.

Q. Now, which one of those parties did you ally yourself with? A. Well, if you ask me who I voted for I can tell you better. I am a Democrat and voted a Democratic ticket, and I was in the convention that nominated Dr. Caldwell for Mayor of the city, and I supported him and supported my friends all along the line.

MR. BLEDSOE: Did you support Mr. Johnson? A. Mr. Johnson was not in my district. I think the first time that I ever met Mr. Johnson was towards the latter portion of the campaign at a political whoop-up.

MR. McPIKE: Have you ever heard Mr. Edwards' reputation discussed there? A. Well, yes; during the last two or three years it has been discussed at different times.

Q. To any extent? A. Well, my attention was called the first time to a discussion as to Mr. Edwards' character at the time he brought a suit against a newspaper there for libel. He obtained a judgment against this paper, and it was at that time that my attention was attracted specially toward him outside of the personal relations that we had sustained towards each other.

Q. Did you hear it discussed at the time he commenced the suit? A. Well, when I say I heard it discussed I will qualify it to this extent—to say that the newspaper he had sued for libel and obtained a judgment against discussed it.

Q. Didn't the people talk about it? A. I think they did, although I couldn't be able to state now who did it, how many did it, or where it was done.

Q. Did you attend Court while that suit was being tried? A. I might have been in the Court-room.

Q. Were you a witness in the case? A. No, sir.

Q. You know, as a matter of fact, do you not, that a number of witnesses took the stand and testified that Mr. Edwards' reputation was not good? A. I could not state that as a matter of fact; I presume that would be done.

Q. You heard that was a part of that case? A. Possibly I have; I would not state positively that I have.

Q. Up to that time you never heard his reputation discussed? A. I would state this, that I never heard anything evil said about Mr. Edwards up to that time.

Q. When was that suit tried? A. My recollection is that it was probably tried a year and a half, maybe two years ago.

Q. Was it before or since that that these charges were made against Mr. Edwards, that he used undue influence with the City Council? A. I do not know that I ever heard that he tried to unduly influence the City Council.

Q. Have you heard it said in San José since, and by a great many, that Mr. Edwards was in what is known as the Rea gang, and trying to run the town; and that he got contracts from the City Council that he had no business to get? A. No, sir; not by a great many people; I have heard the expression about "milking the taxpayers."

Q. Have you heard it said that a contract was awarded to the Electric Improvement Company, of which Mr. Edwards was the manager, and through his influence and Mr. Rea's that they obtained a contract by which they charged the city \$12,000 more than could have been obtained for lighting the city from another company? A. My impression is, Mr. McPike, that this libel suit that I referred to grew out of a charge of that kind.

Q. Did you never hear it charged against Mr. Edwards with several others, that they had obtained two hundred and fifty shares of the capital stock of the Electric Improvement Company for their influence or for his influence with the City Council? A. No, sir.

Q. And that the stock was worth twenty dollars a share when they obtained it? A. No, sir.

Q. You never heard it? A. I did not. I do not recollect it at this time.

Q. Was that charge made and wasn't it used in the last city election there against Mr. Edwards and picked up by numerous citizens on the street? A. It might possibly.

Q. Didn't you hear it? A. I do not recollect it now, sir.

Q. Cannot you recall it? A. No, sir; I cannot.

Q. Did you ever hear Mr. MacKenzie's reputation discussed? A. Yes, I have.

Q. A number of times? A. More since this investigation commenced than ever before. I could not state that I had ever heard anything said against Mr. MacKenzie except that he was very active and very aggressive in politics.

Q. Did you never hear anything charged against Mr. MacKenzie's reputation until you came here? A. For truth and veracity?

Q. Or for honor? A. I never did.

Q. Never? A. No, sir; I am satisfied I never did.

Q. Are you intimate with Mr. MacKenzie? A. No, sir; merely a speaking acquaintance with him.

Q. Never heard his reputation discussed and never heard any charges

against him until this investigation arose? A. There is this about it. I very probably have, but they are charges like those that are made against any man who is active and aggressive in politics.

Q. What were the charges? A. That he had a faculty of obtaining votes and beating his opponent at the ward primaries. A man that can do that ordinarily makes enemies.

Q. Did you ever hear it charged that he had used money on election day in buying votes? A. I think I read it in newspapers, that somebody had charged him, a few days ago.

Q. I didn't ask you if you read it in the newspaper. Didn't you ever hear it charged against him by citizens here that he had used money in elections, and had bought votes? A. I do not think I have, sir.

Q. What do you know, not what you think? A. Well, Mr. MacKenzie lives in a different ward than I do, and he belongs to a different school of politics than I do, and I would state now that I never heard a charge made against any one of buying votes in Santa Clara County, excepting during some election contest there that was had there some years ago. Some charges were made; whether against Mr. MacKenzie or not, I could not state.

Q. Were you ever on the Democratic County Committee? A. No, sir; nor the Democratic State Committee, nor any other committee in that county.

MR. BLEDSOE: You say you are a Democrat in politics? A. Yes.

Q. Attended two conventions, and both Democratic conventions? A. I think I have attended three conventions of the Democratic party that have been held in the city of San José in the last six or seven years.

Q. And were on both tickets? A. What I mean by that is this, in the ward primaries and in our wards in the city of San José there are two tickets. Not exactly two conventions. There are twenty-four men who are recommended or nominated as delegates. Somebody else may go and get up a ticket of twenty-four men. My name was on both tickets.

Q. Are you a friend of Mr. Edwards? A. Yes; and Mr. Edwards is a friend of mine.

Q. An intimate friend of him? A. Not at all. Mr. Edwards and I have met socially and passed the time of day, "How do you do, Mr. Edwards." "How do you do, Mr. Bowden."

Q. You said, also, that you thought that libel suit grew out of the charges, as stated by Mr. McPike? A. That is my recollection.

Q. Do you recollect what the truth of that is? A. The newspaper whooped it up, and my attention was called to it at the time.

Q. Do you recollect what the verdict of the jury was? A. My recollection is, it was in favor of Mr. Edwards. He obtained a judgment. For what amount of money I do not know. I think the case went to the Supreme Court.

Q. Did you make a political canvass for the Democratic ticket last fall, and make any speeches? A. On one, or two, or three occasions.

Q. Did you make any speeches in Mr. Johnson's district? A. Once, I think.

Q. Did you support his candidacy in that canvass? A. I did at that time. Mr. Johnson was present, I think.

The committee here adjourned until Monday evening, February 20th, at seven o'clock P. M.

MONDAY EVENING, February 20, 1893.

D. V. MAHONEY.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you reside? A. I reside in San José.

Q. How long have you lived there? A. About eighteen years.

Q. What is your occupation? A. Court reporter and attorney at law.

Q. Do you know John D. MacKenzie? A. I do, sir.

Q. How long have you known him? A. I have known him for about ten years.

Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I do.

Q. What is that reputation? A. I consider it good.

MR. BULLA: What is it? A. It is good.

Cross-Examination.

MR. McPIKE: Why did you say you considered his reputation good? A. Because I thought it was good. I know it is good.

Q. Have you ever heard it discussed? A. In a certain way I have.

Q. What way? A. I have heard his qualities discussed.

Q. When? A. I cannot tell you exactly when.

Q. Within the last week? A. Yes.

Q. More particularly in the last week? A. No, not particularly.

Q. Who did you hear discuss it within the last week? A. Well, coming up on the cars I think we discussed it a little.

Q. Who? A. Well, I cannot remember who the names were.

Q. When did you come up? A. I came up here last week.

Q. What day? A. I think it was Thursday or Wednesday; the day I was subpoenaed.

Q. Cannot you tell who you talked with on that day? A. I talked with those who were on the train.

Q. Who did you talk to? A. Mr. Austin was one.

Q. A witness here? A. Yes.

Q. What did you say? A. Well, I said that I never heard anything but what was good of MacKenzie.

Q. Did you tell the truth? A. Why, most emphatically, sir.

Q. Never heard anything against him? A. Well, I have heard it in a political sense, where organs were opposed to him in politics, criticising his political methods.

Q. Never heard anybody besides the newspapers there say anything against him? A. Not that I know of, and I have known him pretty well.

Q. You are very well acquainted with him? A. Yes, I am.

Q. Isn't it the report of people that he is connected with a ring there; what they call the Rea gang? A. I do not know that.

Q. You know that, do you not? A. I do not know that.

Q. You are a court stenographer and attorney at law? A. Yes.

Q. How long have you been a stenographer there? A. I think I have been a stenographer in the courts there for about seven years.

Q. And never heard anything about Johnnie MacKenzie? A. I never heard a word against his character.

Q. You are sure of that? A. I am positive.

Q. Are you and Mr. MacKenzie intimate friends? A. Yes.

Q. Are you a friend of Mr. Edwards, too? A. Yes, I am with Mr. Edwards, friendly.

Q. And with Mr. Rea? A. Yes.

Q. And with Mr. Charles Shortridge? A. Well, not so friendly with him. I meet him.

Q. Have you ever held a position as reporter which was obtained through the influence of Mr. Rea? A. No, sir.

Q. Has Mr. Rea anything to do with you having the position there? A. No, sir; I was reporter there before knowing Mr. Rea, Mr. MacKenzie, or Mr. Edwards, or Mr. Shortridge.

Q. Are you now official reporter there? A. No, sir; I never was.

Q. You report cases in the Superior Court? A. I do, sir.

Q. And the Police Court? A. Yes.

Q. Practice in both courts? A. Yes.

Q. How long have you been admitted to the bar? A. On the 14th day of last January, three years ago.

Q. To the Supreme Court? A. To the Supreme Court.

Q. You have heard him discussed politically? A. Oh, most undoubtedly.

Q. Have you heard it said that Johnnie MacKenzie is a man that was very unscrupulous in politics? A. I never heard it said. I have read criticisms in newspapers that were opposed to him in politics.

Q. When you read those articles that were opposed to him in politics, were they severe on him? A. Well, they criticised his methods.

Q. Then when you read those articles, didn't you have occasion to talk with some of your friends about him? A. No, I did not, sir; not particularly, because I am not a politician.

Q. Did you not discuss those things? A. I very seldom take any particular notice to what newspapers say.

Q. Did you discuss it? A. I do not think I ever did.

Q. You say, "I think?" A. I am pretty positive of.

Q. Never have? A. Yes.

Q. Those articles charged that Mr. MacKenzie was buying votes?

A. I do not remember what I read in the paper.

Q. What did you read? A. I do not know that I can remember. I pay but little attention to those things, and was not in politics.

Q. What papers? A. I think it was in a paper—the "Phoenix" was one.

Q. Who was the editor of the paper at that time? A. At that time I think it was J. J. Owen.

Q. How do you know he was an enemy of Mr. MacKenzie? A. Well, I should, from the tenor of the articles published, politically. I do not mean to say, or at least I do not mean to be understood that he was the enemy of Mr. MacKenzie as to his private and personal relations, but I mean in a political sense.

Q. How do you understand that a man can be opposed to one politically, and say all kinds of mean and nasty things about him, and still be friendly with him? A. I do not believe that I ever said that he said mean and nasty things.

Q. Don't you know that when one of the publishers whom you state published articles derogatory to the character of Mr. MacKenzie was

his enemy? A. I believe that I have already stated, and, in fact, I now state the papers published nothing derogatory to his character. I stated that they had criticised his political methods.

Q. What were those political methods? A. From being aggressive in and being hostile generally.

Q. You don't consider that derogatory to a man's character because he is hostile and aggressive? A. No, I do not.

Q. Didn't you say, a little while ago, that you had seen articles charging Mr. MacKenzie with buying votes? A. No, sir, I did not; if I did I wish to correct my statement.

Q. Do you know that Mr. MacKenzie is a warm friend of Mr. Rea's? A. Yes, he is friendly to Mr. Rea.

Q. And is on what is known as Mr. Rea's side of political questions down there? A. Well, perhaps he might be.

Q. Works with him? A. I have no doubt but what he does.

Q. Works around the polls on election day? A. I do not stay around the polls on election day, and I could not swear to it.

Q. Don't you know he is classed down there as a political manipulator? A. What do you mean by a political manipulator?

Q. Don't you know? A. In that sense I do not.

Q. A man that goes to almost any length to gain his political end? A. I do not think so.

Q. You have heard Mr. Edwards and Mr. Rea charged with that down there? A. I never heard of it nor never read of it.

Q. Were you a witness in the Rea-Woods trial? A. No, sir.

Q. Did you hear any of the testimony? A. I heard part of it, and reported part of it, and then I had to go to Marysville to report the Horticultural Convention and I paid no more attention.

Q. Did you report Mr. Rea's testimony? A. I believe I reported part of it. Mr. Whitten was there; he was also reporting, and I was helping him, but I had to go away to Marysville to report the convention.

Q. Have you ever been a member of any convention down there? A. Well, I think I was a member of the convention down there about three years ago.

Q. A county convention or a city? A. I think it was a county convention. I really know it was.

Q. Are you a Republican or Democrat in politics? A. A Republican.

Q. When you went to the convention as a delegate, did you go as what is known as a Rea delegate? A. No, sir.

Q. Was it through Rea's influence that you went? A. No, sir.

Q. You say you did not go as a Rea delegate? A. I did not; I went there as a Republican. I am not in politics, Mr. McPike.

Q. Did you render any services in the Rea-Wood case for Mr. Rea? A. Yes.

Q. What were they? A. I was employed as stenographer to take depositions.

Q. By Mr. Rea? A. By Mr. Richards.

Q. Mr. Rea's attorney? A. Yes, he requested me, as he does in many other cases.

Q. Is that all the service you performed for them in the Rea-Woods case? A. That is all that my memory serves me now.

Q. Didn't you serve subpoenas for them? A. I believe I did. I believe I served one subpoena.

Q. Didn't you serve a great many? A. No, sir; I think only that one.

Q. Did you make a return? A. Well, I don't believe I did serve any.

Q. You directed the service? A. Now, Mr. McPike, I wouldn't say as to that.

Q. If you served subpoenas, you made a return, did you not? A. I do not think I served any subpoenas; I might have.

Q. You do not remember whether you did or not? A. I do not believe I did.

Q. Have you ever acted as attorney for Mr. Rea? A. Never in my life.

Q. For Mr. Edwards? A. No, sir.

Q. For Mr. MacKenzie? A. No, sir.

Q. You visit Mr. MacKenzie's office sometimes? A. Well, where is Mr. MacKenzie's office?

Q. I do not know. A. I visit an office in the Electric Improvement Company's building; I had to present my bills there for collection for reporting.

Q. You visited it at other times? A. I have; yes, on like occasions.

Q. When were you last there, to the Electric Improvement Company's office? A. When I was subpoenaed.

Q. You were subpoenaed at the Electric Improvement Company's office. A. I was requested to go there.

Q. By whom? A. By Mr. MacKenzie; he told me he wanted me to come here and testify as to his reputation.

Q. You belong to the Santa Clara Club? A. No, sir; I do not. I haven't the time to belong to clubs.

Q. What was the conversation that took place between you and Mr. MacKenzie? A. The conversation was that I would come up here to testify, and I went home and came away the next morning to testify.

MR. BLEDSOE: How long have you lived in San José? A. I think pretty near eighteen years; somewhere around there.

J. F. O'KEEFE.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you live? A. San José.

Q. How long have you lived there? A. About ten years.

Q. What is your business in San José? A. Merchant.

Q. In what line of merchandise? A. Teas, coffees, and spices.

Q. And also the owner of your store there? A. Yes, sir; the San José Tea Store.

Q. Do you know J. D. MacKenzie? A. Yes.

Q. How long have you known him? A. About seven or eight years.

Q. Do you know his general reputation for truth, honesty, and integrity? A. Yes.

Q. What is that reputation? A. Good.

Cross-Examination.

MR. MCPIKE: Do you hold any office in San José at present? A. Yes.

Q. What is it? A. School Trustee.

Q. How long have you been such? A. Since the last city election.

Q. Do you know Mr. Rea? A. Yes.
Q. Friendly with him? A. Yes.
Q. Did he assist you in receiving your nomination—secure your nomination? A. Well, that I couldn't say.
Q. Don't you know that he did? A. I think he did.
Q. You know it? A. Not positively.
Q. Didn't he tell you that he would help you? A. No, sir.
Q. Didn't he help you? A. I think he did.
Q. You were indorsed by the Liquor Dealers' Association at the last city election? A. I think so, yes.
Q. You are related to Revenue Collector Dunlap? A. Yes.
Q. You are a very intimate friend of Mr. MacKenzie? A. Yes.
Q. Are you on his bond as Revenue Collector? A. No, sir.
Q. Or Gauger? A. No, sir.
Q. Did you sign his petition for that place? A. No, sir.
Q. Have you any friend or relative in the school department? A. No, sir.
Q. None? A. No, sir.
Q. Have you placed any there at the request of Mr. Rea? A. No, sir.
Q. Assisted to? A. No, sir.
Q. Has he requested you? A. No, sir.
Q. You know that Mr. Rea and Mr. MacKenzie are very intimate friends? A. Yes.
Q. Have you ever heard Mr. MacKenzie's reputation discussed? A. No, sir.
Q. Have you ever discussed it yourself? A. No, sir.
Q. Are you around town a good deal? A. Yes.
Q. Do you furnish teas, coffees, or spices to any county institution? A. I do occasionally, yes.
Q. How long since? A. About a month ago.
Q. Have you a contract? A. No, sir.
Q. You secured this through the Board of Supervisors? A. No, sir.
Q. Sold directly to them? A. No, sir.
Q. Have you a contract? A. No, sir.
Q. Never had one? A. No, sir.
Q. What institution did you furnish there? A. I furnished the jail.
Q. You furnished the jail with all its different supplies in that line? A. That I could not say.
Q. Do you think you do? A. No, sir.
Q. A large part of it? A. About half of it.
Q. You are a Republican in politics? A. Yes.
Q. Do you go to Republican conventions? A. I was to the last convention, yes.
Q. And a delegate? A. Yes.
Q. Were you known as a Rea delegate there? A. No, sir.
Q. What kind? A. Well, I was there in the cause of the Republican party.
Q. Mr. Rea is a very prominent man down there in the Republican party or one branch of it? A. Yes.
Q. The party is divided up a good deal in factions? A. Yes.
Q. Known as the Rea faction and the anti-Rea faction? A. I could not say that.
Q. What are they called? A. Some called purifiers and some called citizens.

Q. What are the others called? A. The ring.
Q. Which do you belong to, the citizens or the ring? A. I don't belong to any of them.
Q. Which side do you ally yourself with, the ring or citizens? A. With the citizens.
Q. Against the ring? A. Not against it; friendly with all of them.
Q. Does Mr. Rea belong to what is known as the ring, or the citizens? A. I think he belongs to the ring.
Q. Does Mr. MacKenzie belong to the ring, too? A. I believe so, being a friend of Rea's.
Q. And Mr. Edwards? A. That I could not say.
Q. What else have you heard the ring called? A. Specified by some as boodlers.
Q. Citizens on one side and boodlers on the other? A. And purifiers.
Q. The citizens are the purifiers? A. Well, it is hard to determine.
MR. BLEDSOE: You know Mr. Edwards? A. Yes.
Q. How long have you known him? A. About eight years.
Q. Do you know his reputation in San José for truth, honesty, and integrity? A. As far as I know, good.
Q. I asked you if you know what his reputation is? A. Yes.
Q. What is it? A. Good.
Q. Have you heard his reputation discussed? A. No, sir.
Q. Then why did you say you know what it is? A. As far as I know.
Q. You never heard it discussed and you do not know, do you? A. As far as I know.
Q. Did you ever hear anybody talk about him? A. No, sir; only through the papers.

PAUL P. AUSTIN.

Called and sworn, testified as follows:
MR. RICHARDS: Where do you live? A. San José.
Q. How long have you lived there? A. About six years.
Q. What is your occupation? A. I am engaged in the real estate and insurance business.
Q. Do you know H. J. Edwards? A. I do.
Q. How long have you known him? A. About six years.
Q. Do you know his general reputation in the community for truth, honesty, and integrity? A. I think that I do.
Q. What is that reputation? A. I believe it to be good. Well, I can say that I know it to be good. I think I am safe in saying that.
MR. RICHARDS: Do you know John D. MacKenzie? A. I do.
Q. How long have you known Mr. MacKenzie? A. About six years.
Q. Do you know his general reputation in that community for truth, honesty, and integrity? A. I do.
Q. What is that reputation? A. It is good.

Cross-Examination.

MR. MCPHKE: You at one time were a business partner of Mr. Rea?
A. I was.

Q. Is he interested in business with you now? A. No, sir; he is not.
 Q. You are a member of the firm of Austin, Potts & Co.? A. Yes.
 Q. What business? A. Real estate.
 Q. Was Mr. Rea interested in that at one time? A. No, sir; he was a member of a firm in San José known as Montgomery & Rea, about four years ago.
 Q. Did Rea remain in the firm? A. No, sir.
 Q. You had some unsettled business with him of the old firm? A. No, sir; not in that office.
 Q. Were you interested with him; were you a business partner of his at one time? A. I was a business partner of Mr. Rea during the first year and a half that I lived in San José.
 Q. What business? A. Real estate and insurance.
 Q. Have you any insurance now with Mr. Rea? A. I think possibly we have.
 Q. So that you are not in with him now? A. No, sir.
 Q. He is one of your patrons? A. To a small extent.
 Q. Mr. MacKenzie also is one of your patrons? A. No.
 Q. Is Mr. Edwards? A. No, sir.
 Q. When did you get acquainted with Edwards? A. The first I knew of Mr. Edwards was when he was Superintendent of the old Gas Company.
 Q. Have any business with him then? A. No, sir.
 Q. Had any since? A. Yes.
 Q. He is a particular friend of yours? A. I cannot say he is a particular friend of mine, but he is a friend of mine.
 Q. Have you ever heard his reputation discussed? A. I have recently, yes.
 Q. Within the last week? A. Yes.
 Q. Previous to that, have you? A. I do not think that I have.
 Q. You knew nothing about his general reputation in the community until about a week ago? A. Yes, I did.
 Q. You never heard it discussed by any one? A. I do not think that I ever heard it discussed.
 Q. Never heard any charges against Mr. Edwards? A. I think not.
 Q. Do you know anything about a libel suit that he had down there? A. I do.
 Q. Which he won? A. Yes.
 Q. What do you know about it? A. I simply know what I saw in the newspapers.
 Q. Did you go to the Court-room? A. I did not.
 Q. Were you a witness? A. I was not.
 Q. Do you know that a number of men took the witness stand in that case, and testified that his reputation for truth, honesty, and integrity was not good? A. As I before stated, I simply know that I read it in the papers at that time.
 Q. That was the general rumor and generally understood? A. No, sir.
 Q. Was it particularly understood? A. No, not particularly.
 Q. Was it understood at all? A. I do not think it was understood.
 Q. How did you understand it? A. I never heard it.
 Q. Never knew that? A. I heard statements of the kind made, possibly. I do not think it was generally understood that that was a fact.

Q. Mr. Edwards is particularly intimate with Mr. Rea in politics?
 A. I know very little about that; I could not say.
 Q. Did you ever attend a convention down there? A. I believe that I was once a delegate to a convention.
 Q. How long since? A. I think it was probably a county convention, three or four years ago.
 Q. Democratic? A. No, sir; Republican.
 Q. Did you go as a Rea delegate? A. I did not.
 Q. Did not vote for Mr. Rea at the convention? A. I did not know that Mr. Rea was a candidate for anything at that time.
 Q. If he had been, you would have voted for him? A. I probably would have voted for him inasmuch as he was a Republican.
 Q. Has there been a good deal of talk, and wasn't there a good deal at the last municipal election derogatory to the character of Mr. Edwards? A. I think not; possibly by his political enemies.
 Q. None by his political friends, of course? A. No, sir.
 Q. What is known as the citizens' movement was brought about down there in San José, on account of the political methods of Mr. Rea, Mr. MacKenzie, Mr. Edwards, and others? A. I do not know that it was; it may have been so charged.
 Q. You are in the real estate and insurance business? A. Yes.
 Q. Any business with Mr. MacKenzie of any kind? A. No, sir.
 Q. Have you heard his reputation discussed? A. Not until this investigation came up.
 Q. And you have heard it only discussed by men who came up here as witnesses, and who came with you? A. I think that is all.
 Q. And all of them friendly with Mr. MacKenzie and Mr. Edwards?
 A. Possibly.
 Q. Especially selected to come here? A. I do not know that they were.
 Q. How did you come to be subpoenaed? A. I am sure I cannot tell.
 Q. Did you ever express yourself and say anything about the reputation of these gentlemen before? A. No, sir; never on occasion to.
 Q. Never stated that you knew what their reputation was? A. I did not.
 Q. Were you interested in any way in what is known as the contract that was let to build the new Hall of Records? A. No; not that I know of; not in any way.
 MR. BLEDSOE: You say that you have only heard Mr. Edwards discussed since this investigation began? A. I do not remember of having heard his reputation questioned or discussed previous to this.
 Q. Do you know what general reputation means? When you were asked to testify as to the general reputation of the man, you know what that meant? A. I think I do.
 Q. What does it mean? A. My impression of it would be—
 Q. Does it mean what people generally say about him or what the newspapers say about him? A. It certainly does not mean what the newspapers say about him. At least I would not so interpret it. It is his general standing in the community.
 Q. It is what people generally say about him? A. Yes, how they regard him.
 Q. Have you never heard before this investigation began Mr. Edwards discussed by anybody in San José, so you can come before this

committee and swear that you know what his general reputation is? A. I say I never heard his reputation questioned.

Q. Have you ever heard it talked about—have you ever heard Mr. Edwards talked about as to truth in San José? A. I have never heard it questioned.

Q. Have you ever heard it talked about in any way from an unfriendly or friendly spirit? A. I have known Mr. Edwards—

Q. Have you ever heard Mr. Edwards' character for truth talked about in San José before this investigation began in any way, friendly or unfriendly? A. I could not remember that that question has ever arisen; no, sir.

Q. Then, as a matter of fact, you do not know what his reputation is? A. Yes, I do; I believe that I do.

R. D. Fox.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you live? A. In San José.

Q. How long have you lived in San José? A. Twenty-eight years.

Q. What is your business? A. Nurseryman.

Q. You are President of the California Nursery Company? A. Yes.

Q. And also own one of the biggest nurseries? A. Yes.

Q. How long have you been engaged in that business in and about San José? A. Twenty-two years.

Q. Do you know J. D. MacKenzie? A. Yes.

Q. How long have you known him? A. About twenty years.

Q. Do you know his reputation in the community for truth, honesty, and integrity? A. Yes.

Q. What is that reputation? A. It is all right; good.

Cross-Examination.

MR. MCPRIKE: Have you ever heard it questioned in any way? A. Well, I have heard it questioned only by some of the boys that he sat down on rather hard.

Q. Who did he set down on? A. Lots of them.

Q. Tell me one? A. His political opponents.

Q. Who did he set down on for one? A. Well, in the last election—the city election.

Q. Tell me one that he sat down on? A. Ben Bailey and Sam Boring.

Q. They are witnesses here? A. I do not know.

Q. How did he sit down on them? A. He tried to defeat him.

Q. In what way? A. Politically.

Q. Used money? A. I do not know that.

Q. Did you hear it said that he used money to beat him? A. I did not.

Q. How could he sit down on him? A. By opposing him.

Q. How was he opposing him? A. Trying to get this man to beat him.

Q. In what way? A. I suppose any way to beat him.

Q. Is he a speaker? A. What do you mean by speaker?

Q. Does he make political speeches? A. Not that I know of.

Q. How could he get votes against him? A. By talking to men privately.

Q. Did he ask you not to vote for Boring? A. No, sir; he did not.

Q. Who else did he sit down on? A. I do not know the others.

Q. Did he sit down on any of the witnesses who came up here on the other side of the case from you? A. I suppose he was opposed to them; I do not know as he sat down on them personally.

Q. How do you know he was opposed to them individually? A. He is a Republican and they are Democrats, some of them.

Q. And some of them Republicans. He was opposed to them because he belonged to what is know as the boodlers, and they belong to the purifiers? A. I don't know as to that. Some people style it that way.

Q. Style you as one of the boodlers, and style the others as purifiers? A. Yes.

Q. What else are they called besides boodlers? A. Not that I know of.

Q. You were a Commissioner to the World's Fair at one time? A. I believe I was.

Q. Are you still drawing a salary as a World's Fair Commissioner? A. I do not know that I ever had any. I want to get it if you assure me of it.

Q. You haven't been receiving two hundred dollars a month? A. No, sir; I wish I was.

Q. Mr. MacKenzie worked for you? A. Yes.

Q. How long ago? A. I think he worked for the company three years ago or so occasionally, off and on.

Q. What did he do? A. Run the engine for us pumping water.

Q. Have you spirit liquors of any kind or manufacture wines or brandy? A. No, sir.

Q. Nothing to do with it? A. No, sir. Drink them once in awhile; that is all.

Q. Do you know Dr. A. E. Meinte? A. Yes.

Q. Dr. Meinte was discharged there; was he not your personal friend? A. No, sir. He is a personal friend of mine, but was not discharged.

Q. Was he asked to resign? A. No, sir.

Q. Was his salary cut off? A. No, sir. The fact of the matter is, the Board of Supervisors—

Q. You do not live in San José, do you? A. No, sir; two miles and a half north of it.

Q. Do you attend to your nursery yourself? A. I either attend to it personally or give instructions to the foreman.

Q. You spend most of your time at the nursery? A. Yes.

Q. How often do you go into town? A. Sometimes once a week, sometimes twice; and sometimes every day, and sometimes twice a day.

Q. What has been your average for the last year? A. Twice a week or so.

Q. When you went into town did you hear anybody discuss Mr. MacKenzie's reputation? A. No; not within the last week, or before that for a long time. I haven't been in the habit of discussing reputations much.

Q. Not at all in San José? A. I haven't, at least.

Q. Do you not run across people there when you come to town, and go to town to do business, and go back? A. Sometimes.

Q. How often have you seen Mr. MacKenzie? A. Sometimes not once in four months, or three months; and sometimes I might meet him twice in some weeks.

Q. Have you heard his reputation discussed in any way? A. Yes; I think I have occasionally.

Q. Some things said bad about him and some good? A. Precisely.

Q. Which was the most? A. The good ones.

Q. What occasion had the good ones to speak of him? A. They thought Johnnie a pretty good fellow.

Q. About what time was it that you discussed him at all? A. I couldn't tell you that.

Q. Who did you hear say anything against him? A. I do not know as I could mention anybody particularly.

Q. Can you mention anybody who said anything in his favor except these witnesses who came here? A. I have talked it over with the boys at home and with others that I met.

Q. When did you talk it over at home? A. Not recently.

Q. A year or two ago? A. I do not remember a year or two ago a circumstance like that.

Q. Then you haven't heard his reputation discussed, and then how do you know it? A. I have heard it as I say, but I do not pretend to mention the individuals.

J. T. RUCKER.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you live? A. San José.

Q. How long have you lived there? A. About all my life.

Q. You are engaged in business there, are you? A. Yes.

Q. What business? A. Carpet and furniture.

Q. How long have you been engaged in that business? A. About seven years—a little over seven years.

Q. Do you know H. J. Edwards? A. I do.

Q. How long have you known him. A. Yes; I have known him I suppose ten or twelve years. A. I do not know just how long.

Q. Do you know the general reputation of Mr. Edwards in the community for truth, honesty, and integrity? A. I think I do.

Q. What is his reputation? A. It is good.

MR. MCPHIE: Do you belong to the Santa Clara Club? A. Yes.

MR. BLEDSOE: On what do you base your testimony as to Mr. Edwards' reputation? A. Well, from acquaintance and association.

Q. Do you know what is meant by general reputation? It is what people generally say about men in the community in which they live. Now, do you know what people say about Mr. Edwards as to his truthfulness in San José? A. Yes.

Q. What is it? A. Well, I have always heard him spoken of in the highest terms, except by a few probably disappointed office seekers—mossbacks, as I should term them.

Q. Do you base your testimony upon that point, upon what you have heard people say about him? A. I base my testimony upon what I do and know.

Q. You think that a jury of San José citizens, knowing Mr. Edwards

as you know him, well acquainted as you are, would believe him under oath? A. I do, most decidedly.

Q. From what you know of his standing in the community, as spoken of among the people, do you think Mr. Edwards would come before this community and, under oath, state a falsehood in order to help out Mr. Rea? A. I do not.

MR. BULLA: What are your politics? A. Well, I never take much interest in politics. I am considered a Democrat—an Independent Democrat.

DR. R. E. PIERCE.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you reside? A. San José.

Q. How long have you lived there? A. About eight years.

Q. What is your occupation? A. Physician.

Q. Been practicing in San José during that time? A. I have.

Q. Do you know H. J. Edwards? A. I do.

Q. How long have you known him? A. Very near eight years.

Q. Do you know the general reputation of Mr. Edwards in the community for truth, honesty, and integrity? A. I think I do.

Q. What is his reputation? A. Good.

MR. MCPHIE: Have you any doubt about it—you say you think you know it? A. No, I have no doubt about it.

Q. Why didn't you say so without saying you thought so? A. His reputation, as far as I know, is good.

Q. How far do you know? A. I have been acquainted with him for eight years.

Q. And you base your opinion upon your personal intimacy with him? A. Partly.

Q. And partly what? A. From what I have heard of him.

Q. Heard his reputation discussed? A. Only heard the newspapers.

Q. What you saw in the newspapers, was it derogatory to his character? A. Some of it may have been.

Q. Are you a member of the Santa Clara Club? A. I am.

Q. President of it at one time? A. I was.

Q. Did you talk in the club what you read in the newspapers, about Mr. Edwards? A. I think I have not.

Q. Have you heard it talked of? A. I have not.

Q. Didn't what you saw in the newspapers occasion you to speak sometimes on the street about it? A. I think not.

Q. Were you a witness in the Rea-Wood case? A. I was not.

Q. And the case of Mr. Edwards against the "Better Times" Publishing Company? A. I was not.

Q. Are you the family physician for Mr. Edwards? A. I am not.

Q. Are you his physician? A. Never have prescribed for him.

Q. You were a candidate for Mayor once? A. No, sir; never.

Q. For the nomination? A. Never.

Q. Never tried to get it? A. No, sir.

Q. Has Mr. Rea ever asked you to? A. No, sir.

Q. Mr. Edwards? A. Never.

Q. Are you a Democrat or Republican in politics? A. Republican.

Q. Which wing of the Republican party do you belong to—the one that sympathizes with Mr. Rea, or the opposition? A. I cannot say that I train with either of them.

Q. What can you say about it? A. I do not meddle with politics at all.

Q. Which of them do you sympathize with? A. Rather with the one that Mr. Edwards belongs.

Q. And Mr. Rea belongs? A. And Mr. Rea.

Q. You say you never heard Mr. Edwards' reputation discussed, either, except in the newspapers? A. I do not think I have.

Q. Did you come here to testify as to his reputation from what you have seen in the newspapers? A. No, I did not.

Q. How have you informed yourself about his reputation outside of the newspapers? A. From personal acquaintance with him.

Q. Then your testimony is based upon personal acquaintance and personal dealings? A. It is.

Q. With him, and that is the breadth and scope of it? A. Yes.

MR. BULLA: It is a fact that there are two factions of the Republican party down there? A. There are.

Q. How are those factions designated—as the Rea faction and the Anti-Rea faction, or by other names? A. They have been designated as such there; a new faction of the Republican party is called the Purifiers.

Q. How do the public generally designate them? A. As the Purifiers and the Rea crowd.

Q. Do they call the Rea crowd by any other name? A. I think I have heard them alluded to as Boodlers.

Q. Would those names apply to a faction there generally, or otherwise? A. I think the name of "Purifiers" is applied to the new faction as being the new club recently organized, in distinction from the regular Republicans in San José.

Q. You say they are generally known as "Purifiers?" A. The new faction.

Q. To the other faction as generally known as "Boodlers," or the ring? A. No, I do not think they are. I think they are known as the Republican party.

H. H. JOHNSON.

Recalled.

MR. MCPIKE: At the time you were at Mr. Rea's office, Mr. Johnson, in company with Major Barrington, on the 8th of December last, did you know that Mr. Schroebel, mentioned on that card, was the gentleman whom you knew when you were a boy in Calaveras County? A. No, sir; I did not.

Q. And in that office, in the presence of Major Barrington and Mr. Rea, or either of them, did you mention Mr. Schroebel's name that day? A. I did not.

Cross-Examination.

MR. RICHARDS: Mr. Johnson, how long have you lived in Santa Clara County? A. About six years, as near as I can remember; it might have been a little more, and might have been less.

Q. During that six years you lived in and about the city of San José? A. Yes.

Q. And have been engaged in working in the lumber business, as I understood you, and in various lumber yards about there during that time? A. Only two yards—two lumber yards.

Q. But during all that time you did work in and about San José, in the two lumber yards you have mentioned? A. I believe I worked in a wood yard for a month—probably two months.

Q. How long have you known Mr. Rea by sight? A. I never knew him by sight.

Q. How long have you known Mr. Rea by reputation in that community? A. I have known Mr. Rea by reputation since I have been in Santa Clara County.

Q. Did you know the business in which Mr. Rea was engaged in Santa Clara County? A. Yes.

Q. You knew that he was in the real estate business there, did you, at one time? A. Yes.

Q. You knew also that he was engaged in the electric light business? A. No, sir.

Q. You did not know the business, then, that Mr. Rea was engaged in? A. No, sir; not if you call the electric business his business, I do not.

Q. Did you not know that he was the Vice-President of the Electric Improvement Company? A. No, sir.

Q. Did you know where the office of the Electric Improvement Company was? A. No, sir; I did not.

MR. MCPIKE: At what time? A. At any time.

MR. RICHARDS: On the evening, then, when you went to see Mr. MacKenzie, you did not know that you were in the office of the Electric Improvement Company? A. No, sir; I did not.

Q. Did you see around you the electrical implements of the Electric Company? A. No, sir.

Q. Did you notice in the room, as you went through it to a private room into which you and Mr. MacKenzie went, the wires and the lamps and other similar articles? A. No, sir; I did not. I will explain now, since I gave you my answer, that I knew nothing about the Electric Improvement Company, or gas companies, or anything of that kind.

Q. Nothing about the implements which are used in the business? A. No, sir; nothing whatever.

Q. Then, if you were shown into a room in which they kept the wires, and lamps, and implements of an electric light company, you would not know it? A. No, sir; I would not.

Q. I understood you to state that you did go into the office, which you supposed was the office of Mr. MacKenzie, upon one night in last November, and did meet Mr. MacKenzie there? A. No, sir.

Q. Do you state now that you did not meet Mr. MacKenzie in the office? A. In an office, yes.

Q. Do you mean to say that you were not in the office with him? A. No, sir.

Q. You remember distinctly that you met him outside, one night? A. Yes. Let us have it distinctly understood as we go along, and there will be no misunderstanding.

Q. You met Mr. MacKenzie outside and went in with him? A. Yes.

Q. When you got inside and MacKenzie showed you the door, and you and he were alone, what did he say to you? A. As near as I can remember, after we went in there, he says, "Sit down." I sat down and he sat down. He says, "I understand that you told Mr. Kirkpatrick, on election night, that you were going to have me arrested for buying votes; is that true?" I says, "Yes, that is true." "Well," he says, "what are you going to do about it?" or something like that. I says, "Well, if I had got beaten I would have had you arrested, but as long as I have been successful I guess I had better let the matter drop."

Q. Proceed. What was the rest of the conversation? A. "Well," he says, "I feel much relieved over that." "Well," I said, "that's all right," or something like that.

Q. Did he refer to the episode of the election afternoon which you have spoken of? A. He didn't say anything about it.

Q. Did he? A. No, sir; not that I remember.

Q. Was there anything said about your having evidence of his having bought votes on that afternoon? A. I do not remember at this time whether there was or not, although I did have evidence. I do not remember whether I said anything about that or not.

Q. You understood that he wanted you down there in order to settle the difficulty which had occurred between you on election day? A. No; I did not understand exactly what he did want, except what Mr. Conner told me.

Q. I understand that Conner told you that he did want to settle that difficulty? A. No; Mr. Conner told me that Mr. MacKenzie understood that I proposed to have him arrested and that he wanted to have a talk with me about it.

Q. Now, you say you had threatened to have him arrested on that afternoon that you had the squabble or difficulty at the polls? A. I did not.

Q. Did you say that you told him that you would have him arrested for buying votes? A. I did, yes, in the booth.

Q. In the booth? A. Yes.

Q. Now, it was that episode you had in mind when you were talking of having him arrested? A. No, sir; I told Mr. Kirkpatrick, my opponent, that I proposed to have him and Johnnie MacKenzie and a butcher by the name of Johnson arrested. I told him that about twelve o'clock on election night. Mr. Conner told me that Mr. Kirkpatrick told Mr. MacKenzie that I had said so, and that Mr. MacKenzie wanted to see me about it.

Q. Then it was about a matter of having him arrested for buying votes that you went down there that night? A. Yes; that is the way I understood it.

Q. You had in mind the difficulty on election day, I suppose, when you went down? A. Yes.

Q. And yet in your conversation you say that matter was not referred to at all? A. Yes; it was.

Q. How was it referred to? A. He asked me if I intended to have him arrested. He said that he understood that I intended to have him arrested.

Q. Referring back to the difficulty on election day which you were to have him arrested? A. Yes; and what I had said to Mr. Kirkpatrick.

Q. You had in mind when talking with Mr. MacKenzie both what you

told Mr. Kirkpatrick and this difficulty you had on election day between Mr. MacKenzie and yourself? A. Yes.

Q. I understood you to state that you had met Mr. MacKenzie once before? A. Twice before that; once on the train between Santa Clara and San José and on election day.

Q. Now, at the time when you met him on the cars, were you on the way from Santa Clara after a political meeting? A. Yes; a Republican meeting.

Q. And Mr. Kirkpatrick introduced you to him? A. Yes.

Q. You were riding home together on the cars? A. Yes.

Q. Do you remember whether Mr. MacKenzie had on his uniform or some regalia of the club? A. I do not remember that.

Q. Where was it between Santa Clara and San José that you were introduced? A. I think about half way.

Q. Were you introduced to any one else there at that time? A. Not that I remember of.

Q. The only person, then, that you were introduced to on that night was Mr. J. D. MacKenzie and Mr. Kirkpatrick, about half way between Santa Clara and San José? A. That is all I remember, yes.

Q. That was the first time you had ever met J. D. MacKenzie? A. Yes.

Q. The second time you met John D. MacKenzie was when you had the trouble in the election booth? A. As far as I remember, yes.

Q. And the third time you met him was this night when you met together for the purpose of settling your difficulty? A. Yes.

Q. Well, now, is that all that Mr. MacKenzie said to you that you have related? A. To-night?

Q. Yes. A. Oh, no; he said a great deal more.

Q. He referred to the Bailey episode? A. Yes.

Q. What more was said with reference to the matter of his arrest, if anything? A. Nothing.

Q. Nothing more? A. Nothing more.

Q. How long did you remain in there in conversation? A. I do not think we were ten minutes.

Q. About ten minutes? A. Yes; it might have been fifteen.

Q. Can you fix the date of that interview? A. I do not believe that I could.

Q. Can you approximate to it? A. It must have been about—I should judge about ten or fifteen days after election; I didn't pay much attention to it at the time.

Q. What was the result of that interview with him? A. The result of it was that I went away from there without any hard feeling against Mr. MacKenzie. We talked about some of the election districts, and he asked me about Mountain View and Mayfield, and one thing and another. I told him that as long as I was successful that I did not propose to have any disturbance about it afterwards; something like that.

Q. I understood you to state that that was the last time and only time you ever were with Mr. MacKenzie in that office? A. Yes.

Q. You swear that you did not or were not with Mr. MacKenzie in the office on one occasion when Mr. James C. Bethell met you there, and whether either you or Mr. MacKenzie inquired for Mr. Rea, and that Mr. Bethell went out to find him? A. No, sir.

Q. You were not there, you say? A. No, sir; positively.

Q. The next time you entered the office, according to your statement, I believe, was when you came in with Major Barrington? A. Yes.

Q. You had never been in that office before in your life? A. No, sir; never.

Q. That is, from the front way? A. Never.

Q. When you went in there, where was Mr. Edwards standing? A. He was not standing; he was sitting.

Q. He was sitting down? A. Yes.

Q. Where was he sitting? A. He was sitting on the inside of the rail, about a desk, as near as I can remember.

Q. Is it not a fact that when you first came in Mr. Edwards was standing outside of the desk? A. No, sir.

Q. And that it was there Major Barrington asked him where the Prince of California was? A. No, sir; it was not. He was standing inside, and Major Barrington went up to the rail and says to Mr. Edwards, "Where is the Prince of California?" and Mr. Edwards says, "He is in his office."

Q. That is the place to which Mr. Barrington went, that is a counter, is it not? A. A part of it is, yes, as near as I can remember, and a part of it is the railing.

Q. Part of it is a counter, and then there is a swinging door at the end of it? A. Yes.

Q. And the rest is what? A. I do not remember what the rest is—never paid any attention.

Q. Where does the railing come in? A. The gate where we came in.

Q. By the gate? A. Yes.

Q. You remember that that is a swinging door? A. Well, I should call it a kind of an open gate.

Q. A swinging gate? A. I never paid much attention to it. Just went through it. I didn't pay any particular attention to it.

Q. Mr. Edwards was sitting, you say, at a desk inside? A. Yes.

Q. Do you remember where the desk was located in the inside of the office? A. I think it was right in the corner of the office, right in the corner nearest to the wall, if I remember correctly. I am not positive about that.

Q. Do you remember that there was a stove near it? A. I did not notice any.

Q. Did not notice any stove—you referred to a desk that is in the north corner, or to the desk which is over by the stove—do you remember where the stove stands? A. No, sir; I did not notice the stove.

Q. When you came into the office from the outside did you notice any one sitting there by the wall on the right side? A. There was nobody sitting in the office except Mr. Richards.

Q. You are quite positive of that? A. Yes, I am positive.

Q. Do you remember when you came in a row of chairs along the wall? A. No, sir; I do not remember.

Q. Now, if you do not remember a row of chairs along there, how can you be positive no one was sitting there? A. Inside of the counter, do you mean?

Q. I mean inside of the office; at any place in the office? A. Just explain what you mean by inside of the counter and outside.

Q. You know along the wall on the east side there are a lot of chairs, do you not? A. No, sir; I do not.

Q. Don't remember that? A. No, sir.

Q. Did you look over that way when you came in? A. On the outside of the counter?

Q. Yes. A. Not necessarily; I do not think I did.

Q. You do not know whether anybody was sitting there or not? A. If anybody was sitting there I certainly would.

Q. Did you see the chairs? A. I think not.

Q. If the chairs were there don't you think you would have seen them? A. I do not know as I would.

Q. If you did not see chairs how can you swear that there was nobody sitting there? A. If anybody was sitting there I certainly would have seen them.

Q. Before you entered in there on that day to see Mr. Rea, you had been talking, as I understand you, with Major Barrington about a hundred dollars that you needed? A. Yes.

Q. And this hundred dollars was to pay a number of your creditors, as I understand it, to whom you owed a small balance? A. Yes.

Q. And the Major was one? A. No, he was not.

Q. Didn't you testify that you owed the Major eight dollars? A. I did, yes.

Q. And wasn't a part of this hundred dollars to be devoted to paying him his eight dollars, or part of it? A. There might have been a little bit of a balance between the Major and I. He was indebted to the club for his suit and dues, and one thing and another which we proposed to settle up.

Q. Another of your creditors who was importuning you was Mr. Kirkpatrick, your political rival, was he not? A. No, sir.

Q. Is it not a fact that you owed him in the neighborhood of forty-five dollars for drums? A. No, sir; I didn't owe Kirkpatrick one cent.

Q. Don't you remember that after the election he came to you to have that money paid? A. I think he did, yes.

Q. There were a number of your creditors who were after you for their money? A. Yes.

Q. I understand that these people wanted their money, and you were anxious to get money for them? A. You name them.

Q. I understood you that you wanted to borrow a hundred dollars in order to pay these bills? A. Yes.

Q. That is a fact, is it? A. Yes.

MR. McPIKE: We will admit that on the records.

Q. You did go to Mr. Friant? A. Yes.

Q. Did you go to get the money? A. Yes, I did.

Q. You went there a few days before the meeting with Mr. Rea? A. Yes.

Q. And you had also procured the indorsement of Mr. Slagts upon your note? A. Yes.

Q. And put that note into the hands of Major Barrington for him to get the money? A. Yes.

Q. Now, who else did you see to get this hundred dollars besides Mr. Friant? A. You mean after I met Mr. Rea?

Q. I mean before you met Mr. Rea? A. Nobody.

Q. Who else did you see to get the hundred dollars after going to Mr. Rea? A. Mr. John Ryland.

Q. When did you meet Mr. Ryland? A. I do not remember exactly

when I went to Mr. Ryland, but it must have been, I think, about two days before I got the money; it must have been about the 12th of December.

Q. It was either Monday or Tuesday before you got the money, if you got the money on Wednesday or Thursday? A. Yes, I think so.

Q. When you went into the office with Major Barrington, I understood you did not know where you were going? A. No, sir.

Q. And found yourself in the presence of Mr. Rea? A. Yes.

Q. That Mr. Barrington introduced you, and said you wanted to borrow a hundred dollars on a note? A. He said, "Mr. Rea, this is Assemblyman Johnson I was telling you about, and he wanted to borrow a hundred dollars, and I have got the note here."

Q. He had the note? A. Yes.

Q. And handed the note to Mr. Rea? A. Yes.

Q. And Mr. Rea looked at it very carefully, as I understand you? A. Yes.

Q. Examined its indorsement; the indorsement was on the back? A. I do not know whether he examined the indorsement or not; he looked the note over carefully.

Q. Do you know whether he read it over? A. I do not; he read it long enough.

Q. He then held the note in his hand, and partially rolled it up? A. He did roll it up like that.

Q. He held it in his hand and partially rolled up. He held it in his hand awhile and proceeded to talk with you, as I understand you? A. No; he didn't talk with me; he was talking with Mr. Barrington most of the time.

Q. Didn't he talk with you at all? A. Very little.

Q. Didn't I understand you to say on your direct examination that he talked to you about the Assemblymen, and how the Assembly stood, as to whether Democratic or Republican? A. He says to me, "You fellows got the best of us." That is the time I said "I don't know about that," and he says "How is that?" "Well," I says, "there is a question whether the Assembly is Democratic or Republican."

Q. And what occurred then? A. "Well," he says, "I haven't paid much attention to it." I says, "I have a little book, or the Major," I says, "has got a little book that shows exactly how the Assembly stands, and the Senate."

Q. And you then got the card from the Major, and handed it to Mr. Rea? A. No, sir.

Q. What was done? A. Mr. Barrington gave the card to Mr. Rea himself.

Q. Mr. Rea took the card and looked over it? A. Yes.

Q. And did he talk with you any further about the members of the Assembly than merely to look over the card after looking over it? A. No, sir; I don't think he said much about it.

Q. What further conversation took place between yourself and Mr. Rea? A. There wasn't much more conversation between Mr. Rea and I. He and the Major talked a little while, and I guess I had been there probably ten minutes, and I says to the Major, "Major, I guess it is about time to be going," and the Major says to me, "Yes, yes, I guess we will go," and he said, "Mr. Rea, you let Mr. Johnson have this money and I suppose he will stand in with you all through the Legislature,"

and I just reached and took the note and said, "That will do for me, gentlemen."

Q. What do I understand that you gathered from that conversation? A. What I understood from all the conversation?

Q. What you understood from the conversation. A. Well, I understood from all the conversation that Mr. Barrington and Mr. Rea were trying to get me to stand in with the Railroad Commission. That is what I understood from it.

Q. You understood that there was a scheme between Mr. Rea and Mr. Barrington to get you in there under the pretense of getting a loan of a hundred on a note, and that you should contract that your vote would be with the Commission? A. Not at that time; no, sir.

Q. Did you so understand it? A. Not at that time.

Q. What did you understand—wasn't the Major's statement that you would sign a paper to that effect? A. When the Major said that, I kind of thought then that there must be something they were trying to get me to do at that time, but still, at that time, I didn't suspect the Major or Mr. Rea, but still I thought there was something wrong about it, but what it was I did not at that time understand.

Q. When did you come to understand it? A. Not until this thing came up.

Q. You said that you heard Mr. Rea and the Major talking outside when Mr. Rea invited him out? A. I did.

Q. And the Major said, "Damn it, I did the best I could." A. Yes, I did.

Q. You heard that; what did you gather from that statement? A. I did not think that had anything to do with me whatever at that time.

Q. Then, as I understand you, although you went in there, and you were in the presence of Mr. Rea—you knew he was a Railroad Commissioner, did you not? A. Yes.

Q. You knew that he was a Republican? A. I did; that is, part of a Republican. I do not consider Mr. Rea a Republican. I respect Republicans, but not that kind.

Q. You knew, Mr. Johnson, that you had opposed Mr. Rea in the campaign? A. I did not, sir.

Q. Didn't you know that Mr. Kirkpatrick was a friend and political associate of Mr. Rea? A. I did not.

Q. Didn't you know that Mr. Rea had been active in Republican politics and had contributed to the nomination of Mr. Kirkpatrick? A. I did not.

Q. Didn't know that? A. No, sir.

Q. You knew, at any rate, that Mr. Rea was a Railroad Commissioner? A. Yes.

Q. You were in his presence, as you claim, for the purpose of borrowing one hundred dollars, and brought there innocently? A. Yes.

Q. You heard Major Barrington offer to sell your vote to Mr. Rea, and for you, at least, to enter into a writing in consideration of his loaning you a hundred dollars? A. Yes, I did.

Q. You heard that? A. Yes.

Q. You heard the Major outside use the expression, which you say he used? A. Yes.

Q. And yet you thought that Mr. Rea and Mr. Barrington were two innocent people, who were not engaged in an effort to corrupt you, or

to gain your vote? A. I didn't say that. I said at the time I didn't understand it that way.

Q. What did you understand at that time—what did you understand was the purpose of those men? A. I suspected it.

Q. And you began to suspect it right there in the room when this proposition was made by Major Barrington and Mr. Rea, didn't you? A. Yes.

Q. You say that you do not think Mr. Rea is a Republican. A. No, sir; I do not.

Q. And you do not have any respect for Mr. Rea's republicanism? A. No, sir; I do not.

Q. Did you have that feeling for Mr. Rea and his republicanism before you went in there? A. Yes.

Q. You have had it for some time? A. Yes.

Q. Had no respect for Mr. Rea? A. No, sir.

Q. Did you not believe that he was an honorable man? A. No, sir; I do not.

Q. Did not think he was honest? A. No, sir.

Q. And you did not believe it on that day? A. No, sir.

Q. If that is true, Mr. Johnson, how does it come that you made an engagement with Mr. Rea to go back on next Saturday and get some good advice—what was the purpose? A. I wanted to find out how he felt about it, and what he knew.

Q. About what? A. Everything.

Q. How does it come you went back to find out all this—why didn't you take some friend with you, and in order that you might have a witness to what was said? A. I didn't suppose it was necessary. I didn't suppose the man was so degraded as that.

Q. You didn't think he was? A. No, sir.

Q. You thought you could go into the office of the Electric Improvement Company, to Mr. Rea's headquarters, which you then knew it to be, alone, and meet Mr. Rea and anybody else he might have there, and get some good advice—is that what you understood? A. Well, the good advice were pointers, you might call them.

Q. And then you were going there to get pointers, were you? A. Yes.

Q. Now, Mr. Johnson, if you were going there to get pointers, how does it come that you made no further effort to borrow the \$100 between the time that you met Mr. Rea to borrow it and the next Monday, when you met Mr. Ryland, after you had made this arrangement to get some good advice? A. Well, I don't know exactly how that was. Probably I did not think about going to Mr. Ryland. You must understand that I did not know exactly where to go and get this money.

Q. You knew there were four banks in the city, or five? A. Yes, I did.

Q. You had been to one of them? A. Yes; I had been to the Union Bank.

Q. You have stated that your indorser was a perfectly reliable indorser? A. Yes.

Q. And you had a note already drawn? A. Yes.

Q. You knew that there was money to loan in a half a dozen or more real estate offices right around the main corners there, did you not? A. I did not.

Q. You did not know that? A. No, sir.

Q. You knew, at any rate, the banks were open several hours during the day? A. I did, yes.

Q. And yet you did not know where to go to get the money? A. I was not acquainted with any man in the banks in San José except Mr. Friant.

Q. You were acquainted with Mr. Ryland? A. Yes.

Q. Couldn't you just as well have gone to see Mr. Ryland either Wednesday or Thursday, without waiting until after Saturday? A. I might not have thought about that. I didn't think about going to see Mr. Ryland.

Q. Your creditors were after you for this money? A. They were not, no, sir. I think I met Mr. Ryland on the street the first time that I thought of going to Mr. Ryland.

Q. You are very positive, I believe, that it was John D. MacKenzie to whom you were introduced on the cars by Mr. Kirkpatrick? A. I think so, yes.

Q. You are very positive it was John D. MacKenzie? A. It might have been his brother; I do not know.

Q. Whom you had the trouble with in the booths? A. I think so. At least I was led to believe so; I never was much acquainted with him, as I told you. It was one of the MacKenzies. It might have been his brother for all I know.

Q. You understood, as I remember your testimony, a little while ago, from Mr. Conner, that you were going down to see John D. MacKenzie to settle your difficulties? A. I do not remember as he said John D. MacKenzie; he said MacKenzie.

Q. You understood that it was Johnnie MacKenzie? A. I do not know that I did.

Q. Then you do not know whether it was Johnnie MacKenzie or not whom you were going to have arrested for buying votes? A. I do not know as I did; no, sir.

Q. You did not even know that? A. No, sir.

Q. And when you met him on that night you did not know whether you had ever met him before? A. I think it was the same man; at least, I supposed so.

Q. Now, if it should turn out that it was not the same man, how would you then explain your reason for going down there to meet him? A. Because that is what Mr. Conner told me. I never suspected it was anybody else except him.

Q. And if it turned out that it was not the same man, how do you explain the conversation which you say took place between you when you went in there to meet him, if it was not the same man? What was the conversation that took place?

Q. And that is your explanation of the matter? A. Yes.

Q. When was it, did you say, you got the card from the Janitor, or the man who wanted to be Janitor of this Assembly? A. I do not know that I ever received a card from any man who was to be Janitor.

Q. I thought you said that you received a card that was issued by somebody who wanted to be Janitor here—a white card? A. I did not say so.

Q. What card was it you gave Mr. Rea? A. I received a card from the State Janitor of this building.

Q. The card you received was from a man who was a Janitor of this building? A. Yes.

Q. When did you receive that card? A. I think about the 5th or 6th of December, as near as I can remember.

Q. When was it that you received the card that Mr. Healy sent you by mail? A. I think it was the same time. I think I received them both about the same time.

Q. I understood you to say that you were in a room with Mr. Rea, and the names of Assemblymen were mentioned, and that you spoke of a card on which the names of these Assemblymen were? A. I do not think so.

Q. Didn't you so testify on your direct examination, that you said you had the names on a card and had given it to the Major and the Major then produced the card; is that a fact? A. I do not think so.

Q. As I have your direct examination here in my notes it reads as follows: "I asked Mr. Barrington for a card, he produced the card, the Janitor's card which I had given him the previous day." If you so testified on your direct examination, was that testimony correct? A. I think so.

Q. You then did ask Major Barrington for a card and he produced it there? A. Yes.

Q. That is a fact, is it? A. Yes.

Q. What had you done in the meantime with the other card you spoke of? A. The Healy card I had given to Mr. Mason.

Q. But as I understand Mr. Mason's testimony, he said that you did not give it to him until about the 10th; if that is so you must have had that card in your pocket on that occasion? A. No, sir.

Q. You are very positive that you did not have it in your pocket on that occasion? A. I am positive that on the day I gave it to Mr. Mason we met and that he told me he had a Janitor's card and then I told him I had a Healy card and took it out of my pocket and he asked me if I would give it to him. I said yes, and I kept the Janitor's card.

Q. You kept the Janitor's card? A. Yes.

Q. On the day you met Mr. Mason you had both cards in your pocket? A. Yes.

Q. And if Mr. Mason testifies it was the 8th or 10th when you gave that card to him, he is mistaken? A. I think he must be, provided the dates are correct. I do not remember anything about those dates.

Q. If you do not remember those dates, how is it that you can testify that you had given this card to Mr. Mason, and did not have it in your pocket at that time? A. Because I had both cards, when I gave Mr. Mason the Healy card, in my pocket.

Q. These cards were quite convenient for you to keep a list of the Assemblymen? A. Yes, they were when I received them. Not afterwards.

Q. And if these cards were so valuable to you, how does it come you gave them away and kept a list of the Assemblymen? A. It was no use to me after I looked it over.

Q. How does it come that you kept a written list of these Assemblymen that you had in your possession when Brownlie came to see you? A. Because I took the written list from the "Examiner" afterwards. When those cards first came out they were not correct; then afterwards

the "Examiner" gave a list which they claimed to be correct at that time.

Q. When you gave those cards away you did not think they were correct, did you? A. They were; yes.

Q. And you did not give them away because they were not correct? A. No, sir; I did not.

Q. Your explanation of how you came to give them away is because you did not understand their importance; is that it? A. They were not important to me after I looked them over.

Q. Why was it important for you to cut a list out of the "Examiner" and keep it? A. Because shortly afterwards it was corrected; there was a good many different contests.

Q. Mr. Johnson, I understood you to say that you got one hundred dollars from the bank on or about the 15th of December? A. On the 14th.

Q. How soon after you got that money was it that you went away from San José? A. I could not say; I think it was about the 18th.

Q. About the 18th? A. I think so.

Q. Where did you go? A. I went to San Francisco.

Q. This hundred dollars which you borrowed to pay your creditors—did you take it with you, or did you pay them? A. I paid most of them; yes.

Q. Where did you get the money, if you paid your creditors, to go to San Francisco? A. I kept enough to go to San Francisco.

Q. You went further than San Francisco, did you not? A. No, sir.

Q. Isn't it a fact that you went from there up to Calaveras County? A. No, sir.

Q. Didn't you go up there with Mr. Peckham? A. On that trip?

Q. Yes. A. No, sir.

Q. How long did you remain in San Francisco on that trip? A. I think about two nights, or one night, I am not positive which.

Q. How long was it after Mr. Brownlie had been there? A. I think about two or three days.

Q. Two or three days after Mr. Brownlie saw you, you went to San Francisco? A. Yes.

Q. Was that the first time you had been to San Francisco since your election? A. Yes.

Q. Up to the time you went to San Francisco, you met different members of the Assembly? A. I did not.

Q. Did you meet Mr. Hurley? A. I did not.

Q. With reference to members of the Assembly whom you knew prior to or up to the time of your election—how many of them did you know? A. I didn't know any of them.

Q. Didn't know any of them at all? A. No, sir.

Q. You say that Mr. Schroebel was your former friend? A. I do not know as I ever met Mr. Schroebel before that time. I didn't remember that if I did.

Q. Had you had any letters from any of them after your election? A. I had not; no, sir.

Q. Had no correspondence with any members of the Assembly after your election? A. Not that I remember.

Q. Until you went to San Francisco? A. Not that I remember.

Q. Had you gone to school with Mr. Schroebel when boys together in Santa Clara County? A. Yes.

Q. When you went into the office of Mr. Rea, and he was reading over the note carefully, and holding it in his hand, did you still think of borrowing one hundred dollars of him? A. Yes.

Q. You would have borrowed the hundred dollars from Mr. Rea if he had loaned it to you that day; would you? A. Yes.

Q. You saw no impropriety in going to Mr. Rea and borrowing a hundred dollars for ninety days? A. No, sir.

Q. In view of the fact that you were to abolish the Railroad Commission and to legislate hostile to railroad interests? A. I didn't consider it hostile to railroad interest. It was in the interest of the people.

Q. Although you had taken a pledge with the Traffic Association, you still considered you were free to borrow a hundred dollars from Mr. Rea upon a note that would remain unpaid while you were a member of the Legislature here? A. Certainly, I did.

Q. And up to the very moment of Mr. Barrington's statement of your signing a paper to stand by the Commission you thought nothing of borrowing the money from Mr. Rea if he would loan it to you? A. I did, certainly.

Q. Now, don't you think, Mr. Johnson, that when you went back on the next Saturday to get the good advice, that you still would have taken the hundred dollars if he would have loaned it to you? A. No, sir; I would not.

Q. You would not have done it? A. No, sir; if he gave it to me, I would not have taken it.

Q. Probably there would have been more hesitancy about his giving it to you than loaning it to you. A. I would not have taken it under any consideration.

Q. Did you have the note in your possession when you went back the next Saturday? A. Yes, I did. I do not know whether I had it in my possession; it was at my home.

Q. The note was under your control at that time at any rate? A. Yes.

Q. It was not until after that Saturday that you delivered up the note to Mr. Slagts, and he destroyed it? A. I never delivered the note up to Mr. Slagts until after we had borrowed the money and came out of the bank, and he asked me for it and I gave it to him.

Q. And during all that time you kept this note for \$100 ready to deliver up to anybody who would loan you the money? A. No, sir; that note was never out of my purse after leaving Mr. Rea's office until I gave it to Mr. Slagts.

Q. When you went back there on Saturday your purse was in your pocket in its accustomed place? A. No, sir.

Q. You did not carry your purse that day? A. No, sir; I don't often carry my purse.

Q. You didn't often carry your purse? A. No, sir.

Q. When did you put the note in your purse? A. When I came out of the office.

Q. You had your purse with you on this day when you went to Mr. Rea's? A. Yes.

Q. How did you come to leave your purse at home? A. I often do. I am not so very sure about it; I wouldn't swear to it positively.

Q. Then you may possibly have had the note in your possession when you returned to Mr. Rea's? A. Yes.

Q. And may have had your note when you came to get good advice? A. I may, yes.

Q. You say you introduced a bill in the lower house to reduce the salaries of the Commission after you arrived here? A. No, sir; I think it was two weeks afterwards—may be about fifteen days afterwards.

Q. Did I understand you to state that you did not know at that time that your bill would affect the present Commission? A. I knew that it would not. I knew that it would not, by the advice of the attorney who drew up the bill.

Q. Who drew up the bill? A. Mr. Burchard and Mr. Spencer.

Q. And when Mr. Burchard and Mr. Spencer drew up that bill they advised you it would not affect the present Commission? A. Yes.

Q. Did they advise you by letter or orally? A. Orally.

Q. Where did you see them to get that oral advice? A. In their office in San José.

Q. When they drew up the bill or afterwards? A. At the time they started in to draw up the bill.

Q. Did you go to them to have the bill drawn? A. I did, yes.

Q. Did you go to them with the idea that it would affect the present Commission? A. No, sir.

Q. Did you know before you saw them that it would not? A. I did not. I stated what I wanted drawn up.

Q. How did you come then to draw up a bill which would act against some future Commission which might be entirely innocent without getting at the present Commission? A. I went to Burchard and Spencer and I informed them that I wanted something that would abolish the Railroad Commissioner, and they told me that what I wanted was a constitutional amendment, and that the people would have to vote on it two years from now; but if I could get a bill of any description through the Legislature that it would take effect sooner, and I left it to them to draw up a bill, and they drew me up that bill.

Q. Then you knew your bill would take effect sooner than a constitutional amendment? A. That is the way I understood it at that time; yes.

Q. When was it you saw Mr. Spencer and Mr. Burchard? A. I think it was about two weeks after the Legislature met. I went to San José.

Q. Up to that time you had not made any effort to have any bill drawn abolishing the Railroad Commission? A. I had not; no, sir.

Q. Don't you know, as a matter of fact, that within the first two weeks after the Legislature met, bills had been introduced here to abolish the Railroad Commission already? A. No, sir; I knew that there were two or three propositions before the Legislature: one was to abolish the Commission without any investigation, and the other was to do it with an investigation—and I consulted this firm to understand exactly how the proposition affected the Commission and the railroad company.

Q. You knew that at the time you consulted this firm that a bill, or one or more bills, were before the Legislature to abolish the Commission, or seeking to abolish the Commission? A. I did; yes.

Q. Why did you go to them to get another bill drawn to abolish the Commission? A. Because I did not think the bill to abolish the Commission would ever go through the Senate.

Q. Did you imagine that any other bill that you might have drawn would get there any easier than those bills? A. I thought it probable, and I think so yet.

Q. At any rate it was after you had found that Mr. Rea did not intend to keep the engagement with you, and did not intend to loan you the hundred dollars, that you had this bill drawn? A. Mr. Rea and I had no engagement nor instruction about the hundred dollars; as I told you, when I left his office that thing was settled, as far as I was concerned.

Q. You did not get the hundred dollars from Mr. Rea? A. I did not want it. I think I could have got it if I wanted it. I did not want it.

Q. Now I understand you to say that after you had given away these cards that you speak of, that you cut a list out of the "Examiner," and kept it in your office? A. No, sir; I took and wrote a list out of the "Examiner."

Q. You had a written list? A. Yes.

Q. You had it at your home when Brownlie called? A. Yes.

Q. Mr. Brownlie showed you this card you speak of? A. Yes.

Q. Why did you ask him for it? A. I did not ask him for it.

Q. How did he come to give it to you? A. He saw my written list. I got up and took it out of the bureau—my written list—and he said, "Haven't you got a card?" I said, "No, I gave them all away," and he said, "Well, you can have this one," and gave it to me.

Q. Then, if Mr. Brownlie testified that you did ask him for the card, Mr. Brownlie is mistaken, is he? A. Yes.

Q. You took the card from Mr. Brownlie? A. I did, yes.

Q. You showed it to your wife? A. I did, yes.

Q. Why did you show it to your wife? A. It was the first one she had ever seen, I think.

Q. Why didn't you show her all the cards which you received? A. Because I did not get my mail at home. My mail comes to the lumber yard where I work, and possibly I had them in my pocket.

Q. And she had never seen them—at any rate you had these cards in your pocket before that time, and you did not think it of enough consequence to show them to her? A. No, sir; I did not. I know I had them in my pocket before that.

Q. After you received this card it was much more convenient than the written list? A. Yes.

Q. Then, why did you turn right around and give it to the Major in a day or two? A. I did not.

Q. When did you give it to him? A. I gave it to him the next day after Christmas.

Q. You received it about the 15th? A. I think so.

Q. And you gave it to Major Barrington about the 28th? A. The 26th.

Q. Which would be about eleven days? A. I think it was the next day after Christmas.

Q. And during all the time you were traveling to San Francisco and back to San José, and then up to Calaveras County, you had this card in your pocket? A. Yes.

Q. Did you ever take it out of your pocket during all that time? A. Yes.

Q. Did you show it to people? A. Yes.

Q. To whom did you show it? A. I showed it to Mr. Peckham.

Q. Did you show it to anybody else? A. I showed it to Mr. Russell, in Stockton.

Q. Mr. Russell, in Stockton. Did he look at the card? A. I think he did; yes.

Q. Did you show it to any member of the Assembly whom you met at that time? A. I do not think I did.

Q. You were out on political matters, were you not, at that time? A. Yes.

Q. Out in the cause of Mr. Peckham as Clerk of the Assembly? A. Yes.

Q. And of the interest of Mr. Healy as Sergeant-at-Arms? A. No, sir.

Q. Were you out in the interest of Mr. White for United States Senator? A. Not necessarily; no, sir.

Q. Well, were you? A. Well, no; I cannot say that I was.

Q. Were you out in the interest of anybody else? A. No, sir.

Q. Had you any other list of the Assembly than this one on the card in your pocket? A. No, sir.

Q. You had occasion, hadn't you, to consult this list frequently in talking to these different people about Mr. Peckham's candidacy? A. I do not think I did. I do not know that I did.

Q. You did not look over the card at all to find out what men were for Mr. Peckham and who would be against him? A. No, sir; Mr. Peckham was looking out for that himself.

Q. He looked after that himself? A. Yes.

Q. And this card you say you did carry in your pocket for these eleven days while traveling around the country? A. Yes.

Q. And then when you came back you gave it to Major Barrington? A. Yes.

Q. In the meantime, during all the time you were carrying it and showing it to various people, you made no mark upon it whatever? A. No, sir; I never marked it nowhere.

Q. Never made any mark on it? A. No, sir.

MR. BLEDSOE: Did nothing ever call your attention to the fact that there were marks on it? A. No, sir.

MR. RICHARDS: And nobody asked you what the marks were on there for? A. No, sir.

Q. You say Mr. Peckham looked over the card? A. Yes.

Q. And Mr. Russell, of Stockton, looked over the card? A. Yes.

Q. Neither of them put any marks on it, or called your attention to what they were there for? A. No, sir.

Q. And neither of them made any other marks on the card? A. No, sir; not that I know of.

Q. During the time that you were out in the interest of Mr. Peckham, did you use any other paper with which to mark down the names of the Assemblymen who were for him? A. No, sir.

Q. Did no writing at all on any card of the names of any of the Assemblymen, or on any paper, during that time? A. No, sir.

Q. Made no memorandum? A. No, sir.

Q. By which to keep the names of those Assemblymen? A. No, sir.

Q. Were you out in the interest of Mr. Gould for Speaker of the House? A. No, sir.

Q. Mr. Gould had either seen you or sent to you? A. I think I had seen Mr. Gould. I am not certain.

Q. You had pledged yourself to Mr. Gould? A. I did not; no, sir.

Q. Then I understand, as a matter of summary of your statement with reference to the card, that all of those cards which you received from every source you gave away within a few days after you received them, and the only thing you kept for your convenience referring to the names of the Assemblymen, was a written list, which you made up from the "Examiner?" A. No, sir; you must not understand me that way.

Q. Isn't that the way you testified? A. No, sir. At the time I received those cards there were a good many contests. Afterwards—some ten or twelve days afterwards—it might have been twelve or fourteen, and might have been less time—the "Examiner" came out with the list, as near as I can remember, and it might have been the "Chronicle" or "Call," as I take all of those papers, and I saw a list in the paper, and I took that list and kept it. It might have been some San José paper; I take five or six or seven papers—the "Herald" and the "Record," and I took the "Phoenix," and the "Examiner," and the "Call," and in some of those papers, I am not positive which one, was a list.

Q. At any rate, you cut a list out of some of those papers? A. I did not; I copied them.

Q. How long have you been taking the local papers that you speak of—the "Phoenix," and the "Record," and the "Herald?" A. These last three years—two years.

Q. Do you mean to tell us that, although you have been taking those papers for the last three years, and they are daily papers, that you did not know that Mr. Rea was Vice-President of the Electric Improvement Company? A. No, sir.

Q. Never saw the statement in any of those papers? A. I might; I never have taken much interest. Whenever I come to any editorial or any statement in the paper as to the Electric Improvement Company or the Gas Company, I drop it right there.

Q. You were not enough interested in the extensive litigation that was going on between those two parties to read? A. No, I wasn't interested in the business, and was sick of the whole business.

Q. Why did you get sick of it if you have never read it? A. Because there was so much of it.

Q. How does it come that it made you sick if you did not take any interest in it? A. Because it was always in the papers.

Q. And it just made you sick to look at it? A. Yes, it did.

Q. And by just looking at it you knew its contents? A. Yes.

Q. Do you know Mr. Hevington? A. Yes.

Q. Did you meet Mr. Hevington during your campaign? A. I did; yes.

Q. Did you meet him in Santa Clara? A. Yes, I did.

Q. Are you the H. H. Johnson whose name appears upon the records of the Sheriff of Santa Clara County for having been arrested for vagrancy three years ago. A. No, sir; I am not.

Q. Do you know of such a record? A. No, sir; I can produce men right here I have worked for for five years in Santa Clara County every day.

Q. Do you know James Guskey? A. Yes.

Q. Did you go with James Guskey to Cupertino on one occasion during the month of October to a meeting out there? A. Yes.

Q. Upon that occasion didn't you say to Mr. Guskey these words, or

this in substance: that thus far in your campaign you had got along without Mr. Rea, and that if you got elected and Mr. Rea wanted anything out of you he would have to pay you for it? A. No, sir.

Q. You did not state that to Mr. Guskey in those words, or in substance, those words? A. No, sir; I never did.

Q. On that occasion? A. No, sir.

Q. Do you know Mr. Jerry Keeler? A. I do not.

Q. Of Santa Clara? A. I do not.

Q. About a week or so after election, in the town of Santa Clara, did you state to Jerry Keeler that you were coming up here to Sacramento to vote for Steve White for what there was in it, or words to that effect? [Objected to, and objection sustained.]

A. I never was in Santa Clara after the election until I came to the Assembly, except once, and then I merely drove through Santa Clara. I deny being in Santa Clara after election.

[The committee here adjourned until to-morrow evening at seven o'clock.]

TUESDAY EVENING, February 21, 1893.

H. H. JOHNSON.

Recalled.

MR. RICHARDS: You testified last evening that while you were in the room with Mr. Rea, and before Major Barrington made the proposition that you would sign a paper to stand by the Commission, or that in effect, that you were willing to borrow the hundred dollars from Mr. Rea? A. Yes, I did.

Q. Mr. Johnson, have you one of those Healy cards? A. I have not; no, sir.

Q. I understood you to state, Mr. Johnson, that when you were in the room with Mr. Rea you did not mark any card? A. No, sir; I did not.

Q. Now, Mr. Johnson, will you take that card and that pencil, and, sitting on that chair, cross your right knee over your left, and put the card on your knee and mark these names on the card, similar to the way the card is marked which is known in this case as the Healy card? A. Let me see the other card if you wish me to mark it exactly like that.

Q. You have seen it. A. When?

Q. Haven't you testified that you saw it when Mr. Brownlie showed it to you? A. I testified I saw Mr. Brownlie mark my name.

Q. Now, mark that card similar to that one? A. As I saw Mr. Brownlie mark it?

Q. Yes, as you saw it. A. How do you expect me to do that?

Q. I do not know. A. Nor anybody else.

Q. Did you see that card in the hands of Mr. Brownlie? A. Yes.

Q. You saw him mark it? A. Yes.

Q. You saw the mark on the Healy card he put on it? A. No, I do not know that I did.

Q. Was there a cross, or a line, or a dot? A. I do not know.

Q. You can testify whether he marked it with a cross, or a line, or a dot? A. I know it is a line, because I saw it.

Q. Put a line opposite your name on that card. [The witness here marked the card.] Now mark the name of Mr. Schlesinger, Mr. Sims, and Mr. Schroebel. [The witness here marked the card as directed.]

Mr. RICHARDS: I will ask that that card be made an exhibit.

[The card was marked "Exhibit 7."]

Q. You have stated that you know Major P. L. Barrington? A. Yes, I do.

Q. That he supported you in his paper and by speeches made in your behalf? A. Not in his paper; no, sir. In his speeches he did.

Q. Did you testify on direct examination that you had an advertisement in his paper of yourself as a candidate, and that you paid him for that advertisement? A. If you consider that putting an advertisement in the paper as supporting me, all right.

Q. Major Barrington supported you during the campaign? A. Yes, he did.

Q. He made speeches in your behalf? A. He did, yes.

Q. In various places? A. Yes.

Q. During the whole campaign? A. No, only in Santa Clara.

Q. When did he make a speech in Santa Clara? A. I believe he made two speeches in Santa Clara.

Q. When was the first? A. One before the Santa Clara Club and one at a public meeting at Santa Clara.

Q. Do you know anything about the dates? A. No, I do not.

Q. How near to election day was the last? A. I guess about three or four weeks before election.

Q. Were those the only two speeches Major Barrington made for you? A. Yes, all I remember.

Q. Was the first ward a part of your district? A. No, sir; it was not; if I had been in that district, I wouldn't have run.

Q. Besides supporting you upon the stump, Major Barrington assisted you through the Willow Glen Club? A. No, sir; he never did.

Q. Wasn't the Willow Glen Club organized in your interest as a candidate? A. Yes.

Q. Wasn't Major Barrington one of the officers of the club? A. Well, we let him have an office along towards the last.

Q. What do you mean along towards the last? A. I should think three or four weeks before the campaign closed.

Q. That is for the last three or four weeks? A. Yes.

Q. What office did he hold? A. He held Major of the drill corps.

Q. And he marched with the drill corps? A. Yes.

Q. Quite frequently during that week? A. I believe four or five times.

Q. You have referred, in your direct examination, to a conversation, which you say took place out at the Wigwam, in which Major Barrington told you that Mr. Rea would put two hundred dollars into your fight, or words to that effect? A. Yes.

Q. It was after that conversation, was it, that Major Barrington continued to act as an officer in your club? A. Yes.

Q. Your relations with Major Barrington, after that time, remained about the same? A. Yes; we were friendly.

Q. Friendly after that time? A. The same as before, yes.

Q. The fact that Major Barrington came to you and told you that Mr.

Rea would put two hundred dollars into your fight did not change your relations with Mr. Barrington? A. Not a particle, nor my opinion of Mr. Barrington either.

Q. I understood you, that after election Major Barrington tried to assist you, and you received or accepted his assistance? A. I did, yes.

Q. Looking towards borrowing a hundred dollars? A. Yes, I did.

Q. Major Barrington was down to the bank and tried to get you the hundred dollars, then did you still think or have the same opinion of Mr. Barrington? A. Yes; I always had the same opinion of Major Barrington.

Q. And even while he was endeavoring to get you this money, and went one or two or three times, and you still had the same opinion of him—did you maintain the same opinion towards him? A. Yes.

Q. What was your opinion? A. My opinion was that the Major would not do to rely upon; that is, politically.

Q. And even while the Major was supporting you with all his eloquence in the campaign, you still thought he would not do to rely upon? A. I did, yes.

Q. And while he was offering to get you the money and was willing to go your indorsement at the bank, you still thought he would not do to rely upon? A. Yes, I did.

Q. You did not tell him any of those things? A. I did not; no, sir.

Q. In your testimony, with reference to Mr. MacKenzie, and your meeting with him on the day of election, you have stated that you went into the election booth and told Mr. MacKenzie that if he did not quit buying votes that you would have him arrested. A. I did, yes.

Q. You supposed at that time that he was buying votes? A. Well, I didn't exactly suppose it; I kind of knew it.

Q. You kind of knew that he was buying votes right then and there? A. Yes, there was one man went into the election booth and was talking with Mr. MacKenzie and Mr. Kirkpatrick before he went in, and he came out of the election booth, and he had three dollars in his hand, and he said, "Johnson, come on, let's go and have a drink;" he said, "Here are three dollars that Johnnie MacKenzie gave me for my vote, and I went in and voted for you, and let's go and have a drink."

Q. Now, if you had that man with three dollars in his hand, which he said Johnnie MacKenzie had given him, and he was your friend to the extent of inviting you out to have a drink, why didn't you have Mr. MacKenzie arrested? A. Well, I intended to.

Q. Why did you testify that you didn't have testimony to convict? A. Do you consider that evidence enough to convict him?

Q. But you have never done so? A. No, sir.

Q. Mr. Johnson, with reference to the transaction and to Mr. MacKenzie buying votes, as you claim on that occasion when you went to see him—on the night when you did go to see him, and see him in his office, that was it? A. Yes.

Q. That was the exact transaction that you had in mind? A. That is all I had to do with Mr. MacKenzie in any way, shape, or form.

Q. And it was with reference to that transaction and that proceeding that Mr. MacKenzie talked to you on the night that you did go and see him in the office? A. Yes, except what I stated about Mr. Bailey.

Q. That was the whole of Mr. MacKenzie's conversation? A. Yes.

Q. In which he did not want you to arrest him? A. No, sir; he did not say he did not want me to. He wanted to know what I intended to do.

Q. For that precise act on that afternoon? A. Yes.

MR. BLEDSOE: Didn't you know, Mr. Johnson, that if you had the evidence in your knowledge to convict Mr. MacKenzie of a felony, that if you went to his office to cover it up that you were making yourself accessory to the crime? A. If I had the evidence to convict him, in my opinion, I would have arrested him the next morning.

Q. You stated you had the evidence? A. All the evidence I had was what this man told me, and nothing more.

MR. RICHARDS: And he told you immediately after he cast his vote? A. Yes.

Q. And with a few dollars in his hand? A. Yes; he showed the three dollars.

Q. And it was right there on the street, where a number of people were around? A. Yes, a lot of people there.

MR. BLEDSOE: Were the saloons open on election day? A. No, sir; the restaurants are open, though.

Q. Mr. Johnson, you say that during the six years you have lived in San José that you took more or less part in politics? A. Yes.

Q. During all the time that you were there? A. Every election; yes.

Q. You got pretty well acquainted with the politicians, both on the Democratic and Republican side? A. No, I cannot say that I did.

Q. You know a great many of them by reputation? A. Yes.

Q. You knew J. W. Rea by reputation, didn't you? A. Yes, I did.

Q. Did you know that he had a pretty bad reputation in San José? A. Yes, I did.

Q. Did you know that he was considered to be not only a bad politician, but a very bad man? A. No, I do not know that I ever heard that he was a bad man, outside of the fact of being a politician; in fact, I have heard otherwise.

Q. Don't you know that he had the reputation in San José of being a corrupt politician? A. Yes.

Q. And of being a leader of a corrupt gang of politicians? A. Yes.

Q. Is that so? A. Yes.

Q. How long had you known that prior to the last election? A. I think I had known that for four or five years.

Q. You had known for four or five years that J. W. Rea had the reputation in San José of being a corrupt politician? A. Yes.

Q. And a leader of a gang of corrupt politicians? A. Yes.

Q. And yet you have testified here that you went to his office on that Saturday, after meeting there with Mr. Barrington and Mr. Rea, for the purpose of getting some advice from Mr. Rea? A. I did, yes; not exactly advice. If you will let me explain I will tell you why I went there. Mr. Rea told me that he knew all the ins and outs of the Legislature, and he said, "If you will come, I will give you some good advice." Now, the good part of it I took with a grain of allowance, but what I wanted to get at was, what he wanted.

Q. You had a pretty good idea of what he wanted, already? A. Yes, I did; but I wanted to get a little more of the particulars.

Q. You thought that he wanted to get your influence for a hundred dollars? A. No.

Q. You had pretty good evidence of that when you told him that was enough of that, when you took the note? A. As far as Mr. Barrington is concerned, yes; but he didn't say anything about it.

Q. Who, Mr. Rea? A. He didn't say anything about it at all.

Q. You understood you were coming here with money from Mr. Rea, if you took it? A. Yes.

Q. And you simply wanted to go back the following Saturday to get some pointers? A. Yes.

Q. You knew he was a Republican, didn't you? A. Yes.

Q. You knew that he belonged to a party to which you did not belong? A. Yes.

Q. And whose nominee you had defeated? A. Yes.

Q. You knew that he had the reputation of being a corrupt politician and the leader of a gang of politicians? A. Yes, I did.

Q. And yet you were willing to go to his office under appointment to receive pointers from him as to the conduct of things here in Sacramento? A. Yes.

Q. Didn't you think that was rather a singular thing to do—to go to a man as to your conduct in the Legislature? A. That was just the kind of a man I wanted to go to. I wanted to find out what he wanted.

MR. MCPHIE: State particularly, and as carefully as you can to the gentlemen of the committee, what you meant by saying "I went there to get pointers from Mr. Rea." Now explain that thoroughly? A. Well, it was like this. When Mr. Rea said that to me I thought at that time that what he meant by good advice was that he would give me some information of how things were done in Sacramento. Afterwards, when I went back, I made up my mind to find out exactly what he meant, and what he knew, and what way he wanted to give me advice—whether it was something to help him or not. If it was, I proposed to investigate it.

Q. Mr. Johnson, you stated in your cross-examination last evening that what you understood from the conversation which took place in Mr. Rea's office between yourself and Major Barrington was that there was a scheme up between Major Barrington and Mr. Rea to get you to support the Railroad Commissioners, and you said that you did not understand the matter then, not until this matter came up. What do you mean by that answer? A. Well, I didn't exactly at that time suspicion it until afterwards, except what Major Barrington said about putting it in writing, and of course I said right then and there I wouldn't have anything to do with it whatever.

Q. When Major Barrington spoke to you in the morning when you visited Rea's office, did he tell you where he was going? A. No, sir; he did not.

Q. What were the words, if any? A. He said: "Come with me and I will get you the money."

Q. You went to Hicks & Foster's real estate office? A. Yes.

Q. Did you know where you were going? A. I did not.

Q. Did you know Mr. Rea by sight then? A. I did not; no, sir.

Q. Did you, when you went into the room where Mr. Rea was, before you were introduced to Mr. Rea, know that it was Mr. Rea's office? A. No, sir; I did not.

Q. Did you expect, or believe, or have a remote suspicion of any kind when you went in the direction of Hicks & Foster's office that you were

going to Mr. Rea's office for the purpose of borrowing this money? A. I did not; no, sir.

Q. Did you ever state to any human being in the world that you expected any money from Mr. Rea of any kind or character? A. No, sir.

Q. Or under any circumstances? A. No, sir; I never did.

Q. Did you have Mr. Rea in mind in reference to borrowing any money of him? A. No, sir; never.

MR. BLEDSOE: Did you call your wife's attention to the marks on the card? A. No, sir; I did not. I did not even ask her before she came here whether she ever saw them or not.

Q. You saw them yourself? A. Yes.

Q. How many? A. I do not know how many. I just saw him mark mine; that was about all.

Q. Did you never notice the other marks on the card while you had it in your possession? A. I do not know as I ever did.

Q. You took it to Calaveras County, and showed it to other people? A. I do not know that I ever noticed it.

Q. You showed it to quite a number of people? A. I do not know whether I showed it to quite a number; I know I did to two or three.

Q. You did not call the attention of any one to the marks on the card? A. No, sir.

Q. And they did not call your attention to the marks on the card? A. No, sir.

MR. BULLA: You say that you thought Mr. Rea might be able to tell you how things were done in the Legislature, was the expression you made use of? A. Yes.

Q. What things did you have reference to? A. Well, Mr. Judge Spencer (let me explain a little bit) told me that my vote would be bought and sold a good many times without my knowledge.

Q. That it would be? A. Yes; I thought Mr. Rea might tell me something that would be a help, so that I could keep out of that.

MR. BLEDSOE: Have you heard that Mr. Rea was a member of the Legislature at any time? A. No, sir.

Q. What made you think that he was so well conversant with how things go on up here? A. He told me he was.

Q. You took his word for that? A. Yes.

MR. BULLA: Your object in going to him was not to learn anything with reference to the discharge of your duty, but how to keep out of complications? A. Yes.

Q. You thought he would know about as much about that as anybody? A. I thought so, yes.

MR. RICHARDS: When did Judge Spencer tell you that you might be bought and sold a good many times? A. I think it was a few days after election, probably a week or ten days.

MR. MCPIKE: I say now that my case is closed, I think, with the exception of some documentary evidence.

REBUTTAL.

J. K. PRIOR.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you reside? A. Sometimes in San Francisco and sometimes in Menlo Park.

Q. Are you acquainted in and about San José? A. Yes.

Q. You have large business interests there, have you? A. Yes.

Q. You are one of the stockholders of the San José Light and Power Company? A. One of the stockholders and one of the Directors.

Q. You are, in fact, a large stockholder of that corporation, are you not? A. Yes.

Q. You are also interested in business in the city? A. I have real estate there.

Q. How long have you been so interested? A. A little over thirty years.

Q. Your business interests in San José have called you there to the city? A. Yes.

Q. In business thirty years? A. Yes.

Q. Are you well acquainted with a great many business men and citizens of San José? A. Yes.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known him? A. About fifteen years.

Q. Do you know his general reputation in the community in which he lives for truth, honesty, and integrity? A. It is good.

Q. You know his reputation, do you? A. Yes.

Q. And what is it? A. It is good.

Cross-Examination.

MR. MCPIKE: When did you get acquainted with Mr. Edwards? A. I got acquainted with Mr. Edwards about fifteen years since.

Q. Where? A. In San Francisco.

Q. What was he doing? A. I do not know exactly what he was doing at the time I got acquainted with him. He was introduced to me by his brother.

Q. What is his brother's name? A. Chas. B.

Q. Where did he introduce you? A. At my store, I think.

Q. Then you were introduced to Mr. Edwards about thirteen years ago—what business was he in? A. I do not know what business he was in. I think some of the time he was in the Assessor's office.

Q. When is the first time that you ever knew what Mr. Edwards' business was? A. What he was doing then?

Q. Yes. A. I say I don't know what he was doing then.

Q. To your knowledge, what was his business the first time that you found that he had any business to do? A. The first time that I found any business he was doing was when he was in the Assessor's office.

Q. Then next after that, what was he doing to your knowledge? A. I do not know what he was doing for some time, as I have not seen him for some time after I was introduced to him. I know he was in the Assessor's office, but I did not see him for some time.

Q. When did you know him in San José first? A. I sent him to San José myself.

Q. How long ago? A. It must be about twelve years since.

Q. Why did you send him to San José? A. Because we wanted some person down there to take stock and go out as collector, and I thought he was a good man and I sent him down there.

Q. What did he say when you were introduced? A. He was introduced by his brother.

Q. What business did you have, if any, with Mr. Edwards before you sent him to San José that led you to believe he was a capable man? A. From general observation I thought he was a very straightforward sort of a man.

Q. Where did you meet him? A. In my office.

Q. After that? A. After that, occasionally; for some time I did not see him.

Q. Didn't you know he was employed in the Recorder's office in San Francisco? A. No, sir.

Q. Was he ever employed there? A. It was the Assessor's office.

Q. Was he ever employed in the Recorder's office in San Francisco to your knowledge? A. No, sir; I never knew he was in the Recorder's office.

Q. Did you ever hear that he was in the Recorder's office in San Francisco? A. No, sir.

Q. As a deputy? A. No, sir.

Q. When, in any capacity? A. He might have been there, but still have been in the Assessor's office.

Q. What do you know about that? I want to know what you know about it; do you know he was in the Assessor's office? A. My impression is that he was with Mr. Badlam in the Assessor's office. If he was in the Recorder's office I did not know it.

Q. Did you place Mr. Edwards in the Gas Company as Superintendent? A. I was one of the Directors at the time he was placed there.

Q. Did you place him there? A. He was not placed there by me personally. Mr. Senator Tilton placed him there. W. D. Tisdall, I think, was President at that time.

Q. Done it at your request? A. Well, it was generally requested.

Q. You testified that you sent him to San José? A. As collector—yes.

Q. What did he do when he went there first? A. He acted as collector, and took statements for about two years.

Q. For the Gas Company—then you placed him there? A. No, sir; I did at first place him there; then he was placed there by my request by the President.

Q. Did you ever hear it reported in San José that when Mr. Edwards was Superintendent of the Gas Company that supplies were appropriated by him from the company and divided with you? A. No, sir. If any man ever said he did, he is a liar and a coward.

Q. You have lived some time in San José? A. Not in San José—I go there and return to the city.

Q. And ever remain in San José? A. Only over night.

Q. How often do you go to San José? A. Sometimes I have been there twice in a week, and sometimes I have not been there for a month.

Q. You go there to attend to your personal business, do you? A. My personal business and the Gas Company's business.

Q. Business that you are engaged in? A. Yes.

Q. When you have finished you go away? A. Yes.

Q. You are a very busy man? A. Yes, I consider myself so.

Q. When you go there you are generally engaged in business? A. Yes.

Q. You haven't time to go around and talk to the neighbors? A. I made some inquiries as to Mr. Edwards' reputation.

Q. In San José? A. Yes.

Q. Why did you do it? A. I was one of the Directors in the company—there was an opposition to Mr. Edwards—certain assertions were made about him, and I thought before I would believe them, that I would inquire about it.

Q. What were those assertions? A. That he took money out of the company's concern and placed it in politics.

Q. And you made inquiries about it? A. Yes, and what sort of a man he was from Judge Peckham and O. A. Hale, and different men, and Mr. Tisdall.

Q. Didn't these Directors come and tell you they had to discharge Mr. Edwards; and didn't they tell you the reason why was that he was taking money out of the company and putting it in politics, and also, he was running a coal yard and didn't buy any coke, but got it from the company? A. I made inquiries and found it was not so.

Q. You heard this? A. Yes.

Q. And you went to the Board and said that Mr. Edwards should not be discharged? A. No, sir. The time I went in the meeting, before Mr. Edwards' discharge, was at the last meeting. That was the meeting that was held after the late Gas Company had dissolved, and the new company, or the Light and Power Company, and the Gas Company had gone in together, and I requested that they would not discharge him, and I told them that it was wrong to discharge him, and that I considered that the company would lose \$100,000 by it.

Q. Did you ever hear it reported in San Francisco, or anywhere, that while Mr. Edwards was in office that he altered certain public records for your benefit? A. No, sir; I never heard it.

Q. Never heard it stated? A. No, sir.

Q. You are certain about that? A. I can swear to it. Positively, yes.

Q. While you were the Director and stockholder in this Light and Power Company, you were also interested in some oil wells? A. Yes. But that has nothing to do with Mr. Edwards; that was entirely my own, and I don't wish to go into private affairs, and in which Mr. Edwards had no interest whatever.

Q. Was not Mr. Edwards manager of the company? A. Mr. Edwards was Superintendent when I advanced this man money to bore for oil.

Q. You had oil wells, and supplied the Gas Company with oil? A. No, sir; I did not have.

Q. I will ask you this question, if you did not have a carload of oil when Mr. Edwards was Superintendent of the company, and Mr. Edwards was asked with regard to the supply of oil on hand and he made a report and you proposed to charge \$4 a barrel, and the company would not pay it, and they went to San Francisco and bought it for \$3? A. Mr. Edwards was not there at the time; as long as we

have gone into it, that Mr. Edwards was not in the office. I had oil up at the wells when I shut down, and I had the selling of the oil.

Q. And you wanted \$4 per barrel and you had the screws on them?

A. That was the last of about \$60,000, and I had the screws on them.

Q. Did Mr. Reihl charge that Mr. Edwards had told him that they had plenty of oil when they did not, and didn't Mr. Reihl make that charge the basis of having him discharged? A. No, sir.

Q. Do you know anything about it? A. I do, sir.

MR. BLEDSOE: What amount of stock did you own at that time in the company? A. Just the same now as then.

A. What proportion of the stock is that? A. I owned about 1,800 shares and a fraction out of 8,750.

Q. You put money in oil there? A. The money I put in oil I lost; I lost about \$4,000.

Q. There was more money in oil than in gas? A. I do not know; I made plenty money out of gas.

Q. That is the time you had a carload out at your wells station to ship? A. I never sold them but one carload of oil, if that's what you have reference to.

Q. Who did you ever hear discuss Mr. Edwards' reputation down there besides the Directors of your company? A. I do not know that I inquired of any person down there except what I have told you; at that time I owned about a third of the stock.

Q. Is it not a fact that you had stated, after these Directors objected and told you that they would discharge Mr. Edwards, that you said if he was discharged there would be another company organized? A. No, sir.

Q. And upon that wasn't this other company, the Electric Improvement Company, organized and Mr. Edwards put in as manager? A. At the time there was nothing certain about it; there wasn't anything certain about the company; I heard he was going to be discharged.

Q. You heard also that he sold coke, and never bought any when he was in the Gas Company? A. No, sir.

Q. Didn't you testify a moment ago that it was one of the charges made? A. You asked me, sir, but I didn't testify as to that.

Q. Didn't you hear that charge made, and didn't Mr. Reihl and others say at the meeting that one of the reasons why they wanted Mr. Edwards discharged was because he was selling coke and never bought any? A. I made inquiries about the coke matter and I found that it was another party altogether, and that we hadn't any coke to sell, and that we were exporting coke from San Francisco.

Q. You are making coke? A. Yes; but we had none to sell.

Q. Did you have any that anybody else could sell, if you didn't have any coke to sell? A. No, sir; we had made gas out of oil, and had no coke.

Q. When Mr. Edwards was in the Gas Company didn't you make coke? A. Sometimes we did, and sometimes we didn't.

Q. Now, you do not know that Mr. Edwards was discharged because of selling that coke? A. No, sir. Some of the men that did accuse him of it took it out of the car and burned it, and Mr. Edwards was accused of it.

Q. You investigated it? A. Yes; and the very men who set out to get money in politics, are the very men who went in to get the \$500 out of the Board.

Q. Do not the books of the concern show that at one time Mr. Edwards got \$321 which he used in politics; and isn't that an entry on the books? A. I never saw it.

Q. Didn't you hold an investigation about that? A. No, sir.

Q. Before the Board of Directors? A. I do not know.

Q. You have seen these entries on these books? A. I say I have not.

Q. Never been called to your attention? A. No, sir.

MR. RICHARDS: You spoke in your direct examination of owning some eighteen hundred shares, and in eight thousand? A. There is eight thousand seven hundred and fifty of the stock issued, and I own about eighteen hundred.

Q. You also spoke in redirect examination at one time about owning a third? A. That was the old corporation. I put up nearly half of the money to build the San José Gas Works.

Q. And for a long time you did own the entire company? A. Yes.

MR. BLEDSOE: At that particular time did you own a third—at the time Edwards was discharged? A. No, sir; because we united with the Electric Brush Company, and the stock was increased from six to ten thousand, and eight thousand seven hundred and fifty issued; I still retained about eighteen hundred shares.

MR. RICHARDS: You stated in your examination that some Director had charged Mr. Edwards with taking some money to use in politics? A. Yes.

Q. You looked into that matter? A. I inquired from somebody if such was the case, and he said no.

Q. What did you find out with reference to that fact of the money being used for politics at that time? A. I was informed that a certain man who was a Director demanded two hundred and fifty dollars to elect his brother-in-law for Mayor of San José.

Q. Did Mr. Edwards have anything to do with that matter? A. No, sir.

MR. BULLA: Have you any stock in the Electric Improvement Company? A. No, sir; people have said that I have, but I haven't.

Q. No interest in any way? A. None whatever, sir.

MR. BLEDSOE: At the time you inquired about Mr. Edwards' reputation, what was it you inquired about? A. I inquired of Judge Peckham what he thought about Mr. Edwards' management, and whether he thought he was spending money, or if he saw him around the office, or if he saw him any place where he was liable to spend money; and I also inquired of Mr. O. A. Hale, whom I know, and Mr. Tisdall, President of the First National Bank.

Q. Among your acquaintance is B. D. Murphy; did you speak to him upon the subject? A. I do not know that I ever spoke to Mr. Murphy upon that subject. I consulted with him about three years ago, but I do not know that I asked about Mr. Edwards.

Q. Then your testimony that you knew the reputation of Mr. Edwards for truth, honesty, and integrity is based upon your personal observation and personal connection with him, and your inquiries of Mr. Hale and Mr. Tisdall and others about the time he was discharged. Have you heard his truth discussed in San José—have you heard anybody say that he was truthful? A. I never heard anybody say that he would not believe him. I have made inquiries about this matter; how he conducted himself and how things were done. I had a very large

interest, and from what this Director said I thought I would make some inquiries elsewhere, because I thought he was prejudiced against him.

Q. During those inquiries you are willing to state now that you know his reputation is good for truth, honesty, and integrity in San José? A. Yes.

Q. Are you and Mr. Reihl enemies? A. Well, no, we are not exactly enemies, but I do not like his management. I think when one loses as much money as I have lost from the management of Mr. Reihl he naturally would feel the same way, and naturally would if he lost sixty or seventy thousand dollars.

Q. Would that influence you in any way in this investigation; do you think that enmity between you and Mr. Reihl would have any influence upon you? A. Not the slightest.

JUDGE W. G. LORIGAN.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you reside? A. At San José.

Q. How long have you lived in San José, Santa Clara County? A. Since 1860.

Q. What office, if any, do you hold at present in Santa Clara? A. I am one of the Superior Judges there.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known him? A. I think thirteen or fourteen years.

Q. Do you know the general reputation of Mr. Edwards in the community for truth, honesty and integrity? A. Yes.

Q. What is that reputation? A. Good.

Q. Do you know John D. MacKenzie? A. Yes.

Q. How long have you known him? A. I have been personally acquainted with him for ten or eleven years.

Q. Do you know the general reputation of Mr. MacKenzie in that community? A. Yes.

Q. What is it? A. Good.

Cross-Examination.

MR. McPIKE: How long have you been practicing law before you went on the bench? A. Ten years, or twelve years.

Q. You read law with Mr. Delmas? A. Yes.

Q. Were you ever attorney for the Electric Improvement Company? A. Yes; from the beginning of its organization until I was elected.

Q. Were you attorney for the Electric Improvement Company at the time they obtained a contract from the city for city lighting, and other places in San José, for \$12,000 more than it could have been lighted for by another company? A. Well, the exact figures I do not recollect.

Q. \$11,888? A. You are familiar with them, and probably that is correct.

Q. You were the attorney for the company at that time? A. I was the attorney.

Q. Mr. Edwards was the Manager? A. Yes; he occupied that position.

Q. Have you ever heard Mr. Edwards' reputation discussed down there? A. Well, in these electric contests there was a very considerable discussion all around, not only involving the light itself and contract, but the parties connected with it.

Q. It is a fact that down in San José there has been a good deal of talk about Mr. Edwards and Mr. Rea, and what is known—well, we will say—well, just for the purpose of classifying them call them the Rea gang—about their methods in politics; about their being unscrupulous in using undue means to accomplish their ends in politics? A. Oh, yes, there has been some discussion of it.

Q. There was a citizens' movement down there about a year ago, which resulted in the election of Mr. Schilling for Mayor on what was known as the Citizens' ticket? A. Yes.

Q. And wasn't that movement brought about to a great extent by charges which were made against Mr. Edwards and Mr. Rea in connection with city politics? A. Well, not entirely.

Q. Were you on the bench when the case of Edwards against the "Better Times" Publishing Company was tried? A. I was one of the Judges at that time.

Q. I mean was that tried before you? A. No, sir.

Q. Have you any particular acquaintance with the trial? A. I have not; I did not attend it. No, I did not attend it; I was not in there at all.

Q. Well, you do not know anything about it personally? A. By the way, have you the date of that?

Q. 1891? A. I mean the month.

Q. The complaint was filed on the 23d day of April, 1891? A. No; I know the fact that it was tried, but I was not in the Court-room at all, and gave it no attention.

Q. It was common rumor down there, Judge, and which you have heard, that Mr. Edwards' reputation was subject to discussion in that case, and that his reputation was directly attacked? A. I think the attack upon Mr. Edwards—that is, the attack of the newspapers, out of which the litigation grew, was with reference to the charge that Edwards had money that he intended to use at the election.

Q. That was true, was it not; that is, it was understood that the Electric Improvement Company put a large sum of money into the fight, and it was also reported that Mr. Edwards was to have charge of the sack? A. I apprehend you have the record, and I presume that is the statement.

Q. The verdict of the jury was for \$750, and he sued for \$10,000? A. If Edwards obtained a judgment, I do not know what the amount was.

Q. I will state that it appears that he brought suit for \$10,000 damages, and the verdict of the jury was: "We, the jury in the above entitled cause, find the amount of damage \$750. C. M. Weber, foreman." Is it not a fact, Judge, that Mr. Edwards' reputation has been the subject of discussion down there a great deal, especially in political times? A. Yes, the political methods have been discussed, not the reputation of Mr. Edwards particularly.

Q. Well, his character? A. More the methods of conducting political campaigns.

Q. Have you ever been attorney for Mr. Rea, outside of being attor-

ney for the Electric Improvement Company? A. Yes. I have attended to a great many matters for Mr. Rea; more particularly I attended to matters pertaining to the firm of Montgomery & Rea, real estate.

Q. Of which he was a member? A. Yes.

Q. Was that up to the time you went on the bench? A. It was up to the time I was elected—in November, I think.

Q. Did you belong to a club down there, known as the Santa Clara Club? A. No, sir; I did not.

Q. Have you ever been a member? A. No, sir; I have not.

Q. Have you ever been a guest at the club? A. I do not think I was ever at the club but once, when, I think, I went up with Judge Hunt, of San Francisco. Well, I will tell you now, as far as that is concerned (and I refer to it simply as the only time I was ever up there), we had some litigation down there, in which my associate and myself had been on opposite sides. After Judge Belden's death, Judge Reynolds was appointed to his place, and Mr. Reynolds was appointed after Judge Belden's death, and Judge Spencer was disqualified. And Judge Reynolds called Judge Hunt to try the action, and Mr. Bean, the party in the suit, and against whom I brought suit, and myself and Judge Hunt went to the club, more as a matter probably on his part to see some of the features of the city than anything else. We remained only a short time.

Q. You are a Republican in politics? A. Yes.

Q. Have you ever been interested in politics since your were a Judge? A. No, sir.

Q. In any way? A. No, sir.

Q. Then you have never taken part in any of these factions? A. No, sir; since I went on the bench, I have not.

Q. What time were you elected? A. November, 1890.

Q. Are you socially intimate with Mr. Edwards? A. No; I have never visited his house.

Q. Is Mr. Edwards a man of family? A. Yes. He has a wife and two children that I know of, because my children have mentioned their names to me, and I believe they go to the same dancing academy. Socially, I do not visit Mr. Edwards' family.

Q. Do you know whether your wife does, whether Mrs. Edwards and Mrs. Lorigan exchange calls? A. I think not; they may. I think Mrs. Lorigan was at one time at some children's party given by Mrs. Edwards; I think that is the extent of it. I think, probably, she has called on Mrs. Lorigan.

Q. How long has Mr. Edwards lived there and been a married man in that community? A. Thirteen years, I think; I could say to my knowledge.

Q. Do you know what Mr. Edwards' nationality is? A. I do not.

Q. Do you know whether he is a citizen of the United States? A. I presume he is, I do not know; he takes a very active part, and I presume he is a citizen.

Q. You do not know whether he votes there? A. No; he does not vote in my ward, if he does vote.

MR. RICHARDS: Do you not know that he is a direct descendant of the late Jonathan Edwards? A. I do not know anything about his ancestors.

Q. You were the attorney for the Electric Improvement Company when it obtained the contract to which Mr. McPike referred? A. I was

attorney for the Electric Improvement Company from the day of its organization until I was elected, and then retired from all business within a few days after my election. I retired from the Electric Improvement business, excepting with reference to a litigation which had been commenced prior to my election, and on that matter I simply gave them the benefit of what information I had, that is all. I did not take any part in the trial.

Q. That was a litigation over its contract which has been referred to? A. Yes. It was a litigation over a contract for an amount; I do not know the amount.

Q. The trial of that litigation was had in San Mateo County? A. Yes.

Q. And resulted in a judgment in favor of the Electric Improvement Company? A. Yes.

Q. Sustaining the contract which was entered into? A. That is the extent and scope of the judgment. That is within the pleadings; I have no doubt but that was the judgment; I understood it to be so.

MR. MCPIKE: Is not the case on appeal? A. That is a fact.

MR. RICHARDS: You have spoken of a discussion that took place at different times with reference to Mr. Edwards' political methods. Has that discussion been a general one among the citizens, or has it been confined mainly to the enemies and antagonists of Mr. Edwards? A. Well, I apprehend that the discussion was principally between the adherents of both corporations, and of course from it radiated among the citizens, as political matters are discussed; but I do not think that there was any discussion had as to particular individuals, but it was more in reference to the political methods of both parties with reference to the antagonistic corporations.

MR. BULLA: Do you know the relations that existed between Mr. Rea and Mr. Edwards, how intimate they are, if they are intimate? A. Well, now, gentlemen, understand me, that since I have been on the bench my time has been so occupied that I have not had the opportunities to meet these gentlemen, that I had theretofore in my business relations, but their relations at that time were cordial and friendly.

Q. Associated in business together? A. Yes; beyond that I do not know. I know about their social relations from what I have observed, as far as their business relations are concerned—

Q. Did you ever observe that Mr. Edwards was interested to any extent for Mr. Rea, so that if Mr. Rea's interests were involved, he would be governed by that fact? A. No, I did not; I cannot say that I have, because their interests were in harmony as far as Improvement matters were concerned.

Q. But suppose that he was placed in the position where he would have to speak or act in such a way that it would affect Mr. Rea's interests? A. I think he would be friendly disposed to him.

Q. You think friendly feelings extend to the point where his actions would be governed or dictated by his friendship for Mr. Rea, in business relations or friendly relations, or in any way? A. No, sir; Mr. Edwards is a man who has decided opinions of his own, and I do not think that he would be influenced by anybody.

Q. Have you ever heard of charges against him, that he would do almost anything to carry out Mr. Rea's political ends? A. No, sir; I have not.

MR. CHAIRMAN: Is not it a fact that there are two political factions down there in San José? A. There are three, I think.

Q. Known as the Rea and anti-Rea? A. There are three, I think, there now.

Q. Well, at the time you were elected, were these factions in existence at that time? A. Well, I do not think there was any Citizens' party at that time. I think that is a later matter; in fact I know it is. The factions existed at the time to the extent that these corporations were in it.

Q. Then there were two factions at that time? A. Well, as far as the corporations were concerned, I do not think there was any faction in the party, excepting only, inasmuch as the persons interested in these corporations might have made them differ politically in their affiliations.

Q. Now, Judge, as a matter of fact, which one of these factions were in favor of your election? A. I am inclined to believe, and I have not any doubt, that as far as this Electric Improvement Company is concerned, that it was friendly to me. While on the other hand, the opposing corporation, some of its members disclaimed any antagonism to me, but judging from their actions I hardly see but what there was some, as their attorney for the corporation on the other side in that political contest was my opponent, but it may be that that corporation did not enter very actively in the contest against me.

Q. You had previously been in the employ of a corporation that you think supported you in your election? A. Well, yes. Well, a man who belongs to a corporation has many warm personal friends, independent of the corporate existence.

MR. BLEDSOE: Is it not a fact that these two corporations, in the rivalry and strife and contests between them, have grown to such proportion that it was the all-absorbing theme at that time in politics and business as well? A. Yes.

Q. It was all the talk at that time, was it not, the strife between these two corporations? A. Yes, no doubt about it.

Q. And the attorney for the San José Light and Power Company which he—who was the candidate that opposed you? A. Mr. Kittredge.

Q. And the two corporations in that contest for the Superior Judge were arrayed against each other; the attorney for one being a candidate for Superior Judge, and you on the other hand being his opponent? A. That is a fact. The attorneys for both corporations were on the ticket for the judicial position.

Q. For Superior Judge? A. Yes.

Q. You received your nomination at the hands of the Republican convention? A. Yes.

Q. Was Mr. Edwards a member of that convention, or a delegate to that convention? A. I would not say for certain, but I presume he was.

Q. Was Mr. MacKenzie a delegate to that convention? A. I am inclined to think he was.

Q. Both of them were delegates? A. I am inclined to think it. I did not go to the convention at all.

Q. Were you nominated before your opponent, or which was nominated first? A. I was.

Q. Was your opponent upon the Democratic ticket? A. The Democrats nominated two—nominated two candidates for Superior Judge—one of them withdrew, and the nomination was filled by the County Central Committee, and Mr. Kittredge was put on against me.

Q. He was the attorney for the other corporation, and it was generally known at the time that he was the attorney for the San José Light and Power Company? A. Yes, I suppose it was, no doubt about it. I know I had appeared in litigation and it must have been known.

Q. Upon what do you base your testimony here as to the general reputation of Mr. Edwards in San José for truth, honesty, and integrity? A. I base it upon the general discussions that were held at those times, and in fact during different political contests that were held there.

Q. You had been active in politics in San José, had you not, before your nomination? A. For some years, to some extent.

Q. And had taken some interest in Republican politics? A. Yes.

Q. And is not it a fact that there were also two factions of the Republican party outside of these corporate contests; one the Rea faction and the other the anti-Rea faction of the Republicans? A. At that time, I think not; no, not at that time. If there was any faction, it was in its incipency, but I do not think there was; I do not think it developed until some time afterwards.

Q. Then you think the real factional fight at that time was between those two corporations, in politics? A. Yes, I am inclined to think it was, I would attribute it to them. Of course there are a number of people, and of which you must be advised, as well as myself, who have asked nominations at the hands of conventions, and failing to receive support have become somewhat antagonistic. If a faction did exist, it had not developed into a faction.

Q. Did you at that time feel that you owed your nomination in a great part to the efforts of Mr. Rea, Mr. Edwards, and Mr. MacKenzie? A. I have no doubt but that I received their support.

Q. Did you not at that time think that you received your nomination from them—that you received your nomination from those three men, and particularly from Mr. Edwards and Mr. Rea? A. I have no doubt about the proposition; I know they supported me.

Q. Did you at that time feel that you owed your nomination, at that Republican convention, particularly to the efforts of the three men, Edwards, MacKenzie, and Rea, and more to Mr. Rea than to either of the others? A. Yes; that is, as to Mr. Rea.

Q. Mr. Rea particularly? A. Yes, I have known Mr. Rea for a great many years, and we have been very warm friends.

J. H. HENRY.

Sworn.

MR. EDWARDS: Where do you reside? A. San José.

Q. How long have you lived in San José? A. During the last five years, except five months that I made my residence in Sacramento.

Q. You are largely interested in the electric railway systems of San José and Sacramento, are you not? A. Yes.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known him? A. In the neighborhood of four years and a half, I should think.

Q. Do you know the general reputation of Mr. Edwards in the community in which he resides for truth, honesty, and integrity? A. I think I do.

Q. What is that reputation? A. Well, I should qualify that answer; I presume, I know him I think in a social and business way; I do not think I do in a political way.

Q. You know it in a social and business way? A. Yes.

Q. What is that reputation? A. I should consider it good.

Cross-Examination.

MR. McPIKE: Have you ever heard of it particularly? A. I presume likely I have.

Q. Have you ever heard particularly, and do you think that you know what it is particularly? A. No, I do not.

Q. No judgment as to it at all? A. You want me to guess at it?

Q. No; what you know. Have you ever heard anything about it politically? A. I do not think I have.

Q. Have you ever heard it discussed at all with reference to the political methods? A. Well, I presume that I have, and still I do not know that I have.

Q. You are interested in the Santa Clara Railway Company? A. Yes.

Q. That is the electric system of San José? A. Yes.

Q. How long have you been such? A. About three years.

Q. Did you ever testify before in reference to Mr. Edwards' reputation? A. Yes.

Q. This is the second time that you have been called upon to testify as to his reputation? A. Yes.

Q. When you obtained your franchises three years ago—you obtained them, did you? A. Yes.

Q. When you obtained it, had you anything to do with the City Council? A. Yes.

Q. Did Mr. Edwards assist you in that matter? A. No, sir.

Q. Did Mr. Rea? A. No, sir.

Q. Did Mr. Shortridge? A. No, sir.

Q. Did any of them have anything to do with the franchise you obtained from the City Council or Board of Supervisors? A. No, sir.

Q. You never sought any assistance from either of those gentlemen, and I will say Mr. Edwards particularly, with reference to any of your electric business in San José? A. No, sir.

Q. You are a Republican in politics? A. Not much.

Q. A Democrat? A. Yes.

Q. You, then, have never been in a Republican primary or had anything to do with the Republican conventions? A. No, sir.

MR. BULLA: Mr. Henry, are you interested in either of the lighting companies down there in San José? A. No, sir.

Q. No stock in either one of them? A. No, sir.

MR. BLEDSOE: Have you heard Mr. Edwards talked about in San José as to his truth and integrity? A. I do not think I have.

Q. Upon what do you base your testimony, then, that you know what his general reputation for truth, honesty, and integrity? A. I base that upon my acquaintance with him in a social and business way.

Q. You have been a witness in a Court before? A. Yes.

Q. Were you not instructed there that by general reputation is meant what is said about him in the community, by the people where he lives? A. I think so; I think that is my understanding of it.

Q. Have you based your testimony solely upon what you know about him personally, your acquaintance with him—you do not as a fact know what his general reputation is, do you? Have you heard people say he was a truthful man or the reverse? A. I never heard it questioned at all. I do not know that you would be apt, if you were acquainted with a person, to talk on the street as to whether he was a truthful person or not.

Q. At the time of that suit there, there was a great deal of talk about Mr. Edwards and Mr. Rea? A. I do not think you could confine it to that time; there was a great deal of talk about these two, politically.

Q. There has been a great deal of talk about them? A. Yes.

Q. Then you have heard talk about Mr. Edwards? A. I presume I have; I have not any reason to say I have not heard talk.

Q. What was the general purport of that talk; was it that he was a man of integrity and truth, or the reverse? A. As far as my knowledge, in a social and business way, that is about it.

Q. You just now testified that there was a great deal of talk about these men? A. I think there was, yes.

Q. What was that talk, what was the general purport of it; was it to the effect that Edwards was a truthful and honest man, or the reverse? A. Well, I presume if I could give you the conversation in the way I have heard it—I probably have heard both sides of the question—at the time of the suit, because his reputation was called into question at the time.

Q. But you know by general reputation is what you have heard about him in the community? A. Yes.

Q. Not what you know of your acquaintance? A. Yes.

Q. Then I ask you what you base your testimony on; you have heard it discussed, have you not? A. I presume I have, although I could not state the place, time, or who did it.

Q. But you have an idea, have you not, of what the general tenor or talk was, whether in his favor as being an honest, truthful man, or against him? A. I should think if I was going to state the conclusion of my judgment to that, I would state that the majority of the talk was in Mr. Edwards' favor.

F. C. FRANCK.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you reside? A. I live in the town of Santa Clara.

Q. How long have you lived there? A. Since 1855.

Q. You are in business in Santa Clara? A. I have been all the time until lately; I just quit.

Q. You are one of the Directors of the Santa Clara County Bank? A. Yes.

Q. And have been a number of years? A. Yes, since its organization.

- Q. Do you know H. J. Edwards? A. Yes.
Q. How long have you known him? A. It is a long time.
Q. Ten or twelve years? A. Yes.
Q. Do you know the general reputation of Mr. Edwards in the community as to truth, honesty, and integrity? A. I think I do.
Q. Is it good or bad? A. It is good.
Q. Do you know John D. MacKenzie? A. Yes.
Q. How long have you known Mr. MacKenzie? A. I think I have known him ever since he was a boy.
Q. Do you know the general reputation of John D. MacKenzie in the community for truth, honesty, and integrity? A. I think so.
Q. What is that reputation, good or bad? A. I should call it good.

Cross-Examination.

- MR. McPIKE: You are a harnessmaker, are you not? A. Well, I was.
Q. Are you engaged in that business now? A. No, sir.
Q. You were a delegate to the National Convention? A. Yes.
Q. Did you obtain that through the influence of Mr. Rea? A. It was four years ago or five—it was over four, I think.
Q. Did you obtain that position through the influence of Mr. Rea and Mr. Edwards? A. I think not.
Q. What do you know about it? A. Well, I took a notion that I wanted to go to the National Convention. I had a pull, and my friends came to me and asked me if I wanted to go, and I told them if no objection I wouldn't mind going, but I didn't want to be cathauled or pulled around, or anything of that kind.
Q. Was Mr. Rea and Mr. Edwards some of the friends that asked you if you wanted to go? A. No, sir.
Q. Mr. Rea was one of them? A. I do not know if Mr. Rea was. I do not think he was.
Q. Did you see him at the convention? A. I do not know but what he was in the convention that sent me.
Q. Didn't you see him at the convention, and don't you know he was there in force? A. Well, I believe he was in the convention.
Q. Didn't he, as a fact, support you, and advocate your going there as a delegate? A. Well, he might, but not that I know of.
Q. Didn't you talk with Mr. Rea about it? A. No, sir.
Q. Didn't you talk with Mr. Edwards about it? A. No, sir.
Q. Was Mr. Edwards a delegate to the convention? A. Well, I could not say; he might have been.
Q. Don't you know that he was? A. No.
Q. Didn't Mr. Rea and Mr. Edwards both vote for you as a delegate? A. I do not know. I think the County Committee put that up.
Q. Was Mr. Edwards a member of the County Committee? A. Well, he might have been.
Q. Was Mr. Rea a member of the committee? A. Mr. Rea was not, I know.
Q. Was Mr. MacKenzie? A. I would not be positive.
Q. Hasn't Mr. MacKenzie been a member of the County Committee ever since you can recollect and since he was old enough to be? A. I recollect a long time ago and I do not think he was at that time.
Q. Has he been within the last six or eight years or ten years a

- member of the County Committee? A. He has been a member of the County Committee for some time I think.
Q. And he was a member of the County Committee at the time you were sent as a delegate? A. I would not be positive. I would not state.
Q. Are you interested in the wine business in any way? A. Not much.
Q. And brandy? A. No, sir.
Q. No spirituous liquor of any kind? A. No, sir.
Q. Make sweet wine? A. No, sir.
Q. Did you ever have occasion to make Angelica, or any sweet wine? A. No, sir.
Q. Mr. MacKenzie is Internal Revenue Collector? A. I believe he is.
Q. Does he visit your winery? A. I don't attend to it myself.
Q. Does he go there? A. He might go there.
Q. Do you know Naglee Burk? A. I do not know him. I do not know anything about him.
Q. Do you go as a delegate to the conventions there? A. Sometimes, yes.
Q. Were you a candidate for Internal Revenue Collector during President Harrison's administration? A. I was.
Q. Mr. Rea was your earnest supporter? A. Mr. Rea was a friend of mine.
Q. And advocated your appointment? A. I think he did.
Q. Earnestly? A. I do not know about that; I never spoke to him about it.
Q. Did Mr. Edwards advocate your candidacy? A. Not that I know of.
Q. Did either sign your petition? A. I do not know; I did not ask any of them to do anything for me.
Q. Who have you heard discuss Mr. MacKenzie's reputation in San José? A. I do not know particularly.
Q. You have heard a great many things said about him, have you not? A. I do not know. You hear a great deal of talk sometimes, but I never heard anything bad about him.
Q. You hear a good deal of talk about Mr. Edwards? A. No, sir.
Q. None? A. I have got dealings with Mr. Edwards.
Q. Isn't your testimony based upon your personal dealings with Mr. Edwards and your acquaintance with him as a man? A. I do not know what you mean.
Q. You know that you testified that you knew his reputation for truth and so on? A. Yes.
Q. And is that based upon your dealings with him and acquaintance with him? A. A good deal, yes.
Q. Isn't it entirely based upon that? A. Not entirely.
Q. How much is based upon that? A. I have known Mr. Edwards for a number of years. I never heard anything discussed in regard to his truth and veracity, or anything of the kind. It never was questioned, that I know of.
Q. Do you know Mr. Kirkpatrick? A. I do.
Q. Do you know Mr. Assemblyman Johnson? A. I do.
Q. You were an earnest supporter of Mr. Kirkpatrick during the last election? A. I am a straight Republican.

Q. Please answer the question, then. A. I voted the Republican ticket.

Q. Did you support him? A. I voted the Republican ticket.

Q. Did you vote? A. I did.

Q. Did you work for him? A. I do not know that I did.

Q. Didn't you post cards all over your house? A. I posted everybody's card.

Q. Did you post Mr. Kirkpatrick's? A. I do not know that I did.

Q. Do you know that you did not? A. Everybody left their cards in my place, and I didn't pay any attention to them.

Q. What kind of a place is it? A. I keep a mercantile business; a saddlery.

Q. You were elected to the State Senate here once? A. No, sir.

Q. Did you ever hold any office from that county? A. I have.

Q. What was it? A. Assemblyman.

Q. How long since? A. About twenty years ago.

Q. Not by Mr. Rea's influence then? A. I have other friends there besides Mr. Rea.

MR. BULLA: Did you ever hear of the existence of two factions in the Republican party down there? A. There is a great deal of talk.

Q. Is it a fact that one of those factions is friendly to Mr. Rea and another is not friendly to him? A. I think that is the case.

Q. What was known as the Rea faction and the anti-Rea faction? A. I think that is a good deal so.

Q. Did you ever hear them designated by any other name? A. Well, I do not know. I am pretty straight in party matters and never pay much attention to these things.

Q. Isn't it a fact that one party down there is called the purifiers, another the boodlers? A. Well, I do not belong to either of them.

Q. Did you ever hear them designated that way? A. I generally go my own way.

Q. Did you ever hear those two factions designated in that way—are they generally known by those names down there? A. Well, I do not know anything except the Republicans and Democrats.

Q. Never heard them generally spoken of in that way? A. Well, I have heard it frequently mentioned that way, yes.

Q. You say you do not belong to either one of these factions? A. Not much; no, sir.

Q. You are simply a Republican? A. I am a straight-out Republican, and always was.

Q. Which one of those factions is always considered straight-out Republicans? A. Well, I do not consider any faction about the Republican party.

Q. You say there are two factions there, now which of the factions was generally considered as the straight Republicans? A. The Rea faction.

J. R. NORTON.

Called and sworn, testified as follows:

MR. RICHARDS: Mr. Norton, you live in San José? A. Yes.

Q. How long have you lived there? A. About thirty-eight years.

Q. You have been in business in Santa Clara County? A. Yes.

Q. In what business are you at present engaged? A. I am in the agricultural implement business.

Q. You are a member of a firm down there? A. Trainor & Norton.

Q. Do you know John D. MacKenzie? A. I do.

Q. How long have you known him? A. About thirty years, I think.

Q. Do you know the general reputation of John D. MacKenzie in the community for truth, honesty, and integrity? A. I do.

Q. What is that reputation? A. It is good.

Cross-Examination.

MR. McPIKE: What did you say your business was? A. I am a dealer in farming implements.

Q. Proprietor? A. Yes.

Q. Take any interest in politics? A. Yes, some.

Q. Did you in the last election? A. Yes.

Q. You are a Republican? A. Yes.

Q. Which faction do you belong to down there—what is known as the Rea faction? A. I belong to the Republican party; I do not belong to any faction.

Q. If the Republican party is split into a faction, which one do you belong to? A. I don't recognize any faction; I vote the Republican ticket.

Q. Isn't it a fact that there are two factions down there in the Republican party? A. Yes, there are.

Q. Which one do you belong to? A. I do not belong to either.

Q. Mr. Rea belongs to one and other citizens belong to the other? A. Yes, there were two factions there.

Q. Which one do you sympathize with? A. I sympathize with the Rea faction.

Q. You do? A. Yes.

Q. Are you in business with Mr. Rea? A. No, sir.

Q. Have you any business connection with him at all? A. No, sir.

Q. Never been a candidate for Sheriff? A. Yes.

Q. You were known as Mr. Rea's candidate at that time? A. No, sir.

Q. Did Mr. Rea and Mr. Mitch Phillip support you? A. Mr. Mitch Phillip did, Mr. Rea did not.

Q. Mr. Rea opposed you? A. Yes.

Q. You go as a delegate to city and county conventions? A. Most generally, yes.

Q. Are you not known as a programmer in the convention? A. I do not know; I am a Republican. Call me a programmer if you like; I always go to Republican conventions.

Q. Never been a candidate for anything but Sheriff? A. Yes.

Q. What? A. Supervisor.

Q. How long since? A. About ten years.

Q. Anything besides Supervisor? A. No, sir.

Q. And Sheriff? A. No, sir.

Q. Nothing? A. No.

Q. Did you take any part in the election on the 8th of November last? A. I expect so; I think I did; yes.

Q. Where were you on that day mostly? A. In San José.

Q. Did you have headquarters there anywhere? A. No; only on the street.

Q. In any room? A. No, sir.

Q. You were not in any room? A. No, sir.

Q. You were on the street all the while? A. Yes; I was in and out of hotels there and different places.

Q. Did you have anything to do with buying votes there? A. No, sir.

Q. You never did? A. No, sir.

Q. Don't you know that you were charged with vote buying on the 8th of November last? A. I did not hear about it.

Q. Do you know Anada Castro? A. No, sir.

Q. You did not know you were charged with purchasing votes on the 8th of November last—buying six at one time? A. No, sir; I did not.

Q. Were you at a place called the Western Hotel on election day? A. My place of business is right alongside of it.

Q. Were you there? A. Yes.

Q. Known as 73 and 75 West Market Street? A. I do not know the numbers.

Q. Were you in that hotel on election day? A. I think I was; yes.

Q. In a room? A. I was in the dining-room and bar-room.

Q. Was the bar-room opened on election day? A. I think not; I think it was closed.

Q. How did you get in there if it was closed? A. I went in the door.

Q. Was it closed? A. The front door was closed, the back door was open.

Q. Did they deal out liquors there that day? A. I didn't see any dealt out.

Q. Did you take any drinks there? A. No, sir; I do not drink.

Q. Did you give any drinks away? A. No, sir.

Q. Did you see any men drinking? A. I do not think I did.

Q. What is your recollection about it? A. I might have seen men drinking; I couldn't say positively yes or no.

Q. At the bar? A. I do not think I saw anybody drinking; there might have been; I could not say.

Q. Did you see them hold glasses to their lips with liquor in them? A. No, sir; I think not.

Q. How could they drink if they did not? A. I couldn't say whether they drank or not; I was not watching them to see whether they drank.

Q. Now, what other room were you in besides the bar-room? A. That is all.

Q. Did you see a number of men there during election day? A. Yes; lots of men.

Q. Did you converse with them with reference to their votes? A. I do not know but what I did, yes; I always converse with men on election day about their votes.

Q. Do you know a man there, an election officer, who wore a small straw hat on election day, on the Board of Election? A. I do not know what kind of hats they had on.

Q. Did you tell any men, there in that room that day, when they voted, to go to a certain election booth and to ask one of the election officers, a man that wore a small straw hat, to fix their votes? A. No, sir.

Q. You did not? A. No, sir; I do not know that anybody had a straw hat there.

Q. Do you know Mr. William Kreig? A. Yes, very well.

Q. Did he have a straw hat on that day? A. I do not know.

Q. You did not tell any voters to go there and have him fix the ballots? A. No, sir; I did not.

Q. On election day did six certain men come to you and receive instructions with reference to going to an election booth and seeing a man with a straw hat on and ask him if he was the officer of election and to fix their ballots, and then did you tell them to return to you, and did they return and receive two dollars apiece? A. No, sir.

Q. Or any sum? A. No, sir.

Q. Nothing of the kind took place? A. No, sir.

Q. Who have you ever heard discuss MacKenzie's reputation? A. A good many people.

Q. Who were they? A. Well, most all these witnesses that came up here.

Q. That is all? A. And other people besides them.

Q. Some were summoned and did not come? A. No; men that I have heard talk.

Q. Who did you hear talk about Mr. MacKenzie's reputation besides those that came here? A. I could not give you the names, because I do not recollect.

Q. When did you hear them? A. I heard them since this investigation.

Q. Not until then? A. I think not.

ARTHUR J. FIELD.

Called and sworn, testified as follows:

MR. RICHARDS: Where do you live? A. San José.

Q. How long have you lived there, sir? A. For nineteen years.

Q. You are engaged in business in San José? A. Yes.

Q. In what business? A. I am a real estate dealer.

Q. How long have you been so? A. For about eight years.

Q. Do you know H. J. Edwards? A. Yes.

Q. How long have you known him? A. For ten or twelve years.

Q. Do you know the general reputation of Mr. Edwards in the community for truth, honesty, and integrity? A. Yes.

Q. What is that reputation, good or bad? A. First class.

Q. Is it good? A. Yes.

Cross-Examination.

MR. McPIKE: You belong to the Santa Clara Club? A. Yes.

Q. How long have you been a member? A. I was one of the charter members.

Q. Mr. Edwards is a member? A. I think he is.

Q. Don't you know that he is? A. I do not know that he is; no, sir.

Q. Did you ever meet him? A. Yes; but whether he is a member or not I do not know.

Q. Have you seen him there frequently? A. No.
 Q. Did you lunch there at the club? A. No, sir; I never.
 Q. They play billiards there? A. Yes.
 Q. What is your business? A. I am a real estate dealer.
 Q. Were you ever a witness before in any case in which Mr. Edwards' reputation came up? A. No, sir.
 Q. You say you never were a witness before where his reputation was the subject of inquiry? A. No, sir; I think not.
 Q. What do you know about it? A. No; I do not remember.
 Q. Weren't you a witness and didn't you take the stand and testify as to Mr. Edwards' reputation in the case of Edwards against the "Times" Publishing Company? A. I think not.
 Q. I will ask you the direct question, whether in the case of H. J. Edwards against the San Jose Printing and Publishing Company et al., the complaint was filed on the 23d day of April, 1891, in the Superior Court of Santa Clara County, and which case was tried on the 23d day of September, 1891, and I ask you whether or not you were called as a witness in that case and did not testify as to the reputation of Mr. Edwards? A. If I was I have forgotten it. I remember such a case being there.
 Q. Weren't you a witness and wasn't you subpoenaed there to testify in that case as to the reputation of Mr. Edwards? A. I do not remember.
 Q. Is that your answer? A. Yes.
 Q. Have you ever heard Mr. Edwards' reputation discussed, his character? A. Yes.
 Q. For how long? A. At that time—during the progress of that trial.
 Q. And before that time? A. Not that I remember; no, I think not.
 Q. Did not you swear in that case that you had heard his reputation discussed? A. I do not remember.
 Q. Didn't you testify in that case that you knew his reputation for truth, honesty, and integrity? A. I do not remember.
 Q. Is that your answer? A. I do not remember.
 Q. Who have you heard discuss his reputation? A. Well, coming up, the other day on the cars, I heard it discussed.
 Q. Is that the first time? A. No.
 Q. There were witnesses that came up here with you? A. Yes.
 Q. Are you in the office of Austin, Potts & Company? A. Yes.
 Q. What is their business? A. Real estate and insurance.
 Q. Have you got the control of what is called the cemetery, or trying to urge the City Council to let it go to you—what is called the cemetery? A. There is a suit to be begun next Monday, I believe.
 Q. With that in view? A. To again occupy a portion of the cemetery.
 Q. Is Mr. Rea interested in it? A. No, sir; not that I know of.
 Q. Have you ever been a candidate for office? A. No, sir.
 Q. You are an intimate friend of Rea's? A. No; but I am a friend of his.
 Q. Do you go to the city and county conventions there? A. Once.
 Q. Did you go as a Rea delegate? A. No, sir.
 Q. Are you known as a programmer? A. No, sir.
 Q. Which faction do you belong to down there—the Rea faction or the anti-Rea faction? A. I am a Republican.

Q. Which faction of the Republican party do you belong to, the Rea faction or the anti-Rea faction? A. I do not belong to either faction.
 Q. Which one did you belong to at the last city election? A. Neither one.
 Q. Did you vote the Citizens' ticket, or the other ticket? A. I mixed it up.
 Q. You are a scratcher, then? A. Yes.
 Q. Are you a stockholder in the Western Granite Marble Company? A. Yes.
 Q. That company is now engaged in building the Hall of Records? A. Yes.
 Q. Were you stopped a short time ago on the ground that they were not proceeding according to contract? A. Not that I know of.
 Q. Never heard of it? A. No, sir.

STIPULATION.

The following stipulation was entered into: That Mr. O. A. Hale will testify that he is Manager of the O. A. Hale Company; has resided in San José for twenty years or more, and knows the reputation of Mr. Edwards and Mr. MacKenzie in the community, and that the reputation of these gentlemen is good; that in politics he is a Republican, a member of neither faction, a friend of Mr. Rea, and a friend of Mr. Edwards and Mr. MacKenzie. On cross-examination he will testify that he was once a witness to sustain the character of Mr. Edwards in the case of Edwards against the "Times" Publishing Company, and that, as to the rest of his cross-examination, it would be in line with that of the other witnesses who have been examined here on the part of the prosecution.

It is also stipulated that James Guskey, if called, will testify that Mr. Johnson said at one time, when he was going out to Cupertino, that he had made his own way so far in the campaign without any help, and that if Jim Rea wanted anything out of him he would have to pay for it; that if he got elected, and Mr. Rea wanted anything out of him, he would have to pay for it. And it is understood that Mr. Johnson has denied that.

It is also stipulated that Mr. Kirkpatrick will testify that at the time he was coming from Santa Clara to San José on the street cars with Mr. Johnson that he introduced Mr. Johnson to Mr. Andrew MacKenzie and not to Mr. Johnnie MacKenzie, and that is the occasion Mr. Johnson referred to in his testimony—that is the occasion referred to by Mr. Johnson in his testimony. That Mr. Kirkpatrick was the political opponent of Mr. Johnson on that occasion.

It is also stipulated that Elmer Shaile will testify that he was a member of the Election Board in the precinct referred to by Mr. Johnson, Park Avenue and Orchard Streets; that no difficulty occurred in that precinct on election day between John D. MacKenzie and Mr. Johnson; but that in that precinct some difficulty did occur between Mr. Andrew MacKenzie and Mr. Johnson.

The testimony in the case here closed.

The committee here adjourned until Wednesday evening, at seven o'clock, to hear the arguments in the case.

REPORT

OF THE

TESTIMONY AND PROCEEDINGS

IN THE MATTER OF THE

Investigation of the Charges made against W. H. H. HART
Attorney-General, before the Committee of the Assembly
appointed for the purpose of Investigating said Charges.

TESTIMONY.

On Tuesday morning, February 14, 1893, Assemblyman W. P. Mathews, Chairman of the Assembly Committee on Ways and Means, offered the following report:

ASSEMBLY CHAMBER, SACRAMENTO, February 14, 1893.

MR. SPEAKER: Your Committee on Ways and Means deems it a duty to bring to the notice of this Assembly certain willful neglect of duty, official misconduct, and misdemeanor in the office of Hon. W. H. H. Hart, Attorney-General of the State of California.

Your committee represents and charges that said W. H. H. Hart has, at sundry times during the past two years, willfully and persistently neglected his official duty as the legal adviser of the State officials, thereby necessitating the employment of special counsel, and imposing a heavy and unnecessary expense upon the State.

That the said W. H. H. Hart has, as your committee have been informed and believe, employed special counsel when it was unnecessary to do so, presumably for the benefit of an intimate friend and associate, and that for such services he has approved of unreasonable and exorbitant claims.

Your committee further represents and charges that said W. H. H. Hart, on account of suits instituted by the State against certain Harbor Commissioners, received in satisfaction of judgment, the following sums:

July 25, 1891, People vs. Phillips	\$7,725 82
Aug. 1, 1891, People vs. Blanding	6,601 56
Oct. 25, 1892, People vs. Knight	2,404 36
Nov. 25, 1892, People vs. Blanding	1,120 00
Total	\$17,851 74

That said W. H. H. Hart has, for a period of nearly two years, retained in his possession the bulk of this money, in violation of the law now in force and effect, and that he failed and neglected to make any mention of the said money in his annual report, dated September 15, 1892.

That by the action of this Assembly, and a formal demand made by the Controller, said W. H. H. Hart was apprised of his dereliction of duty, and notified to pay into the State Treasury the amount of money now in his possession, which belongs to the State, but has refused to comply with the demand, and is, therefore, guilty of official misconduct and misdemeanor in office.

Your committee, in conclusion, respectfully asks at the hands of this honorable body, that the rights of the State be vindicated, and the integrity of the public service be preserved, by an investigation of the official acts and conduct of the said W. H. H. Hart, and the passage of the following resolution is recommended:

Resolved, That the Speaker be and is hereby authorized to appoint a special committee of five, whose duty it shall be to inquire into the

official conduct and acts of W. H. H. Hart, Attorney-General of the State of California, and that said committee have full power to send for persons and papers, and that they report to this Assembly by impeachment or otherwise.

W. P. MATHEWS, Chairman.
JULIUS KAHN.
C. W. TINDALL.
JOHN C. LYNCH.
T. J. KERNS.
P. H. MACK.
J. M. LARUE.
C. D. BARKER.
G. W. MORDECAI.

The resolution was adopted, and the Speaker appointed as such committee, Messrs. Mathews of Tehama, Tindall, Mack, Kahn, and Lynch.

The committee met in the afternoon of said day and organized, and took an adjournment until Thursday, February 16, 1893, at 3 o'clock p. m., at which time the committee met and, at the request of Attorney-General W. H. H. Hart, adjourned to meet Monday, February 20, 1893, at 10 o'clock a. m.

On Monday, February 20, 1893, at 10 o'clock a. m., the committee met in the Supreme Court room, Department No. 2, at the State Capitol. It was announced that Assemblyman John C. Lynch would be unable to take part in the investigation, on account of other engagements, and a request was sent to the Speaker to appoint some one else in his place. The Speaker appointed Assemblyman C. M. Simpson to take his place. Thereupon the following proceedings were had.

THE CHAIRMAN: I wish to state to Mr. Hart, and to his attorneys and others, that the committee have retained Mr. Devlin to advise with them concerning this matter, and to assist in conducting the inquiry.

GENERAL BARNES: Mr. Chairman, we would like to inquire at this time if it is usual for a committee, a majority of which is composed of—some of them I know by repute to be—very good lawyers, to employ counsel?

THE CHAIRMAN: It may not be usual, Mr. Barnes, but if not usual we think it advisable to establish a precedent.

GENERAL BARNES: I am merely inquiring for information about it.

THE CHAIRMAN: I do not know what the customs are.

ATTORNEY-GENERAL HART: Mr. Chairman, I suppose that the committee will allow me to have such counsel as I see fit?

THE CHAIRMAN: Certainly.

GENERAL HART: Then I desire to have General Barnes entered as my attorney, and J. H. Budd of Stockton, and Mr. Frank Stone of San Francisco, as associates.

THE CHAIRMAN: Very well.

MR. DEVLIN: I understand that the committee has laid down no course of procedure, and we might perhaps agree now as to what line this inquiry shall take, and what evidence shall be presented. This committee was appointed by virtue of a resolution suggested by the Committee on Ways and Means. The Committee on Ways and Means, on February 14th, reported to the Assembly that the Attorney-General has, at sundry times during the past two years, willfully and persistently

neglected his official duties as the legal adviser of the State officials, thereby necessitating the employment of special counsel, and imposing a heavy and unnecessary expense upon the State.

That the said W. H. H. Hart has, as your committee has been informed and believes, employed special counsel when it was unnecessary to do so, presumably for the benefit of an intimate friend and associate, and that for such services he has approved of unreasonable and exorbitant claims.

Your committee further represents and charges that said W. H. H. Hart, on account of suits instituted by the State against certain Harbor Commissioners, received, in satisfaction of judgments, the following sums: July 25, 1891, People vs. Phillips, \$7,725 82; August 1, 1891, People vs. Blanding, \$6,601 56; October 25, 1892, People vs. Knight, \$2,404 36; October 25, 1892, People vs. Blanding, \$1,120. Total, \$17,851 74.

That said W. H. H. Hart has, for a period of nearly two years, retained in his possession the bulk of this money, in violation of the law now in force and effect, and that he failed and neglected to make any mention of the said money in his annual report, dated September 15, 1892. That by the action of this Assembly, and a formal demand made by the Controller, said W. H. H. Hart was apprised of his dereliction of duty, and notified to pay into the State Treasury the amount of money now in his possession which belongs to the State, but has refused to comply with the demand, and is, therefore, guilty of official misconduct and misdemeanor in office. Your committee, in conclusion, respectfully asks at the hands of this honorable body that the rights of the State be vindicated, and the integrity of the public service be preserved, by an investigation of the official acts and conduct of the said W. H. H. Hart, Attorney-General of the State of California; and the passage of the following resolution is recommended:

"Resolved, That the Speaker be and he is hereby authorized to appoint a special committee of five, whose duty it shall be to inquire into the official conduct and acts of W. H. H. Hart, Attorney-General of the State of California, and that said committee have full power to send for persons and papers, and that they report to this Assembly by impeachment or otherwise."

And in compliance with the resolution, as reported by that committee, the committee now sitting were appointed.

THE CHAIRMAN: With the exception of Mr. Lynch, who was unable to be here, and Mr. Simpson has just been appointed by the Speaker to take Mr. Lynch's place.

MR. DEVLIN: I suggest, Mr. Chairman, for the purpose of having an orderly and logical examination, that we take the matter up by subjects. We might take up for examination first, the subject of the retention of public moneys, and go into that matter, and then we might pass to the other subjects. If we do not do that, we will get into a sea of confusion.

THE CHAIRMAN: I think that is the best course to pursue, and that seems to be the sense of the committee. So, if Mr. Hart is ready to proceed on that line, we will proceed in that way.

GENERAL HART: How is that?

THE CHAIRMAN: I say it is the sense of the committee that we take up the subjects mentioned by Mr. Devlin, and inquire into and exhaust that subject before going into any other matter.

MR. DEVLIN: I would like to ask the gentlemen on the other side if they will admit these allegations: That, on July 25, 1891, the Attorney-General received \$7,725 82.

GENERAL BARNES: You had better prove your case.

MR. DEVLIN: You do not admit those facts, then?

GENERAL BARNES: Do not admit anything.

J. P. LANGHORNE.

Sworn.

MR. DEVLIN: Your name is J. P. Langhorne? A. Yes.

Q. You reside, where? A. San Francisco.

Q. Your business is, what? A. Attorney at law.

Q. Did you have any connection, as attorney at law, with suits brought to recover money from the bondsmen of Mr. Gray, former Secretary of the Harbor Commissioners? A. No, sir.

Q. What suits were you interested in? What were those suits? A. The suits against the bondsmen of the Harbor Commissioners themselves.

Q. Was any money collected from the bondsmen by settlement, compromise, or otherwise? A. Well, of my own knowledge, I only know the amount that was paid to me.

Q. How much was paid to you? A. \$1,120.

Q. In what case? A. It was paid by Mr. Quackenbush—Thomas M. Quackenbush—one of the bondsmen on the bond of Mr. William Blanding.

Q. In the case of The People vs. Blanding? A. Yes.

Q. What did you do with that money? A. That was paid to me by Mr. Quackenbush in the Attorney-General's absence—while he was absent in Los Angeles, about the 16th of November, 1892—and on the Attorney-General's return I sent him my certified check, which I have here, and also received a receipt from the Attorney-General for that amount.

Q. What date? A. That was on November 25, 1892.

Q. How did you pay it to him—personally, or by mail, or in what way? A. Well, when I heard that the Attorney-General was back from Los Angeles, I went out and found him in the Probate Court. I had my check with me, but he said he wanted the check certified; and I went back and had the check certified, and then sent it out by my clerk on the same day, the 25th, with this receipt written out, and the clerk came back with this receipt. And I subsequently got the check back from the First National Bank.

Q. Is that now shown you the check that you sent to the Attorney-General? A. Yes.

Q. Is the paper that you hold in your hand the same receipt that he signed upon the presentation of that check? A. Well, I did not see him sign it.

Q. Do you know his signature? Are you acquainted with it.

GENERAL BARNES: Let us see it.

A. I think it is his signature. I have seen his signature several times. And that is also his signature indorsed on the check.

GENERAL BARNES: Mr. Devlin, the receipt is in the proper handwriting

of Mr. Hart. The indorsement upon the check, "W. H. H. Hart, Attorney-General," is in his proper handwriting. I suppose you will read it with the indorsement, will you not?

MR. DEVLIN: Yes; I offer the check and receipt in evidence. The check is as follows:

No. —.

\$1120. SAN FRANCISCO, November 25, 1892.

The First National Bank of San Francisco, Cal.—Pay to Wm. H. H. Hart, Attorney-General, or order, (\$1120) eleven hundred and twenty dollars. J. P. Langhorne. Good when properly indorsed. J. Wilson. Clearing House. Paid, December 12, 1892. First National Bank of San Francisco.

Indorsed: Wm. H. H. Hart, Attorney-General. Pay only through Clearing House, December 12, 1892. 16. The Nevada Bank of San Francisco.

[Marked Exhibit A-1.]

SAN FRANCISCO, Nov. 25, 1892.

Received of J. P. Langhorne eleven hundred and twenty (\$1120) dollars, being the amount paid him by Thomas M. Quackenbush, in settlement of cause of action against him in case of People vs. Blanding et al. Wm. H. H. Hart, Attorney-General.

[Marked Exhibit A-2.]

Q. I will ask you, Mr. Langhorne, if you delivered the check to Mr. Hart on the day it bears date, November 25th, or sent it to him? A. I sent it to him by my clerk, as I stated, on that day.

Q. Did you get the receipt back on that day? A. Yes.

Q. On November 25, 1892? A. Yes.

Q. Do you know anything about these other cases that are mentioned—that is, either individually or as a member of the firm of Langhorne & Miller—People vs. Phillips, People vs. Blanding, and People vs. Knight? Do you know the amounts received by settlement or compromise? A. After the passage by the last Legislature of the Act permitting the Attorney-General to settle those cases, that Act directed that the moneys received in settlement should be paid to him; and so far as any further proceedings in those cases were concerned, with the exception of, at the Attorney-General's request, urging those people to settle, because they were very dilatory about it even after the passage of that Act—we had no further connection with the cases, and were not present when the moneys were paid to him, and in fact did not know of our own knowledge the exact amounts that were paid to him until here lately—with the exception of the amount that I have stated that I received from Mr. Quackenbush.

Q. Do you know anything personally about those moneys being paid to him? A. No, not personally—not further than what I have heard the Attorney-General state himself.

Q. Well, what has he stated? A. He made a statement the other day in Court in regard to the amounts. I heard that statement.

Q. Did he give the dates? A. I believe he did.

Q. Can you remember the dates? Were they the same as published in this report? A. I cannot remember the dates at all, sir.

Q. Do you remember the amounts? A. I did not make a memorandum at the time. He made a statement, but I could not give the exact amounts that he stated.

Q. Who else knows about the payments in the other three cases, Mr. Langhorne? A. I presume the parties who paid the money in.

Q. Do you know who they are? A. No, I do not; I was not present when any of those moneys were paid.

Q. Were you interested in the cases in any way, as partner or in any way, with anybody who did pay them?

GENERAL BARNES: Is there any objection to asking the questions and getting the answers in a sufficiently loud tone so that we can hear?

A. As I have already stated, our firm, the firm of Langhorne & Miller, had the prosecution of those cases; the Harbor Commissioner cases—

MR. DEVLIN: What I want to get at is, do you know anything about who paid the money in the case of *The People vs. Phillips*, to the Attorney-General? A. I do not.

Q. Or in the case of *The People vs. Blanding*? A. With the exception that Mr. Quackenbush paid the amount as I have stated, I do not know who paid the money in that case.

Q. Were you connected with all those cases; interested in those cases? A. Yes.

Q. Who else was interested with you? A. Mr. John H. Miller.

Q. Who attended to the cases? A. I attended to the cases in Court, but I was not sent for when those moneys were paid in, and was not present when they were paid to the Attorney-General, with the exception of the amount I have stated in regard to Mr. Quackenbush.

Q. Have you any information as to how they were paid? A. The only intimation—

GENERAL BARNES: The question is, whether you have any information? A. As to by whom they were paid?

Q. No; he asks you if you have any information about it; that is a question that you can answer by yes or no; then we will see whether you are able to testify to it? A. Further than the statement that I heard the Attorney-General make the other day in Judge Levy's Court, in regard to the other amounts, I do not know.

Cross-Examination.

GENERAL BARNES: Mr. Langhorne, were you employed in these cases originally? A. No, sir.

Q. What time did you come into them? A. In December, 1889, our firm received a letter from the Attorney-General—

Q. Just state the date. A. I have the letter here, I think, of the Attorney-General.

Q. Can you state the month and the year that you came into the case. A. In December, 1889.

Q. By whose employment? A. By Attorney-General Johnson's.

Q. Do you know how long the causes had been then pending? A. Since March, 1884.

Q. Do you know who were parties plaintiff? A. Yes.

Q. Who? A. The People of the State of California were parties plaintiff.

Q. How many causes were there? A. Three.

Q. Who were the defendants? You cannot give all the bondsmen, I know; but Phillips and his bondsmen— A. I have a memorandum.

Q. Blanding and his bondsmen, Knight and his bondsmen. Is that right? A. Yes.

Q. Was there any suit, to your knowledge, against George S. Evans and his bondsmen? A. The record at San Francisco did not disclose any.

Q. Well, do you know of any yourself? A. I do not, sir.

Q. You never heard of any cause, similar to those begun against Phillips, Blanding, and Knight, commenced against General Evans, of Stockton, and his bondsmen? A. I never heard of any.

THE CHAIRMAN: You wrote to the Committee on Ways and Means, and the letter is on file among our papers, setting forth the fact of the payment of these moneys. What information did you have when you wrote that letter? A. I would like to see the letter, Mr. Mathews.

Q. It was Mr. Miller who wrote it? A. Yes; it may have been Mr. Miller.

Q. It was Mr. Miller? A. Mr. Miller, I know, made an inquiry in regard to the amounts, and I was very busy at the time. I would like to state, in answer to your question, that I do remember writing you a letter and stating the amount.

Q. Amounts? A. The amounts.

Q. That was a letter addressed to the committee, setting forth that you had rendered these services and that these moneys had been paid and collected in. That was in reference to your own fee allowed by the committee. Then it sets forth these facts, substantially as they appear in that Journal of the Assembly, at page two? A. Well, I will say that I understood, of course, that they had been paid in.

THE CHAIRMAN (to General Barnes): Here is the data, General Barnes, on which the Committee on Ways and Means originally acted.

GENERAL BARNES: I have no doubt that you had some information. I do not suppose it was an invention, by any means.

MR. DEVLIN: Mr. Langhorne, were you present in the Superior Court in San Francisco, in the department presided over by Judge Levy, on or about the 17th day of February, when General Hart made a statement concerning the receipt of these moneys? A. I was.

Q. Have you read the article that appeared in the "Evening Post" of Friday, February 17, 1893? A. I did.

Q. Is that a fair statement of what General Hart stated at that time? A. I think it is. I did not examine it critically to determine.

THE CHAIRMAN: The statement furnished the committee does not correspond with the evidence as to the date of October instead of November. It should be November. The amount of money is the same—\$1,120.

GENERAL BARNES: We will send for a certified copy of the complaint in that case. The chances are that none of these dates are correct.

MR. DEVLIN: Will you admit them as they are stated in this complaint?

GENERAL BARNES: As in the complaint, yes.

MR. DEVLIN: Mr. Chairman, I have been furnished with a certified copy of the complaint in the case brought by the People of the State of California against the Board of State Harbor Commissioners, in which certain allegations appear, and it will be admitted that on the 30th day

of August, 1891, a suit against Phillips and his bondsmen was settled and compromised by the payment of one third of said amount of \$23,036 47, to which amount was added the cost, Clerk's fees, entry of dismissal, expenses of serving summons, and reporter's fees, making the total amount of \$7,725 82 paid to W. H. H. Hart, on the 30th day of August, 1891.

On the 25th day of October, 1892, he received in the suit against W. H. Knight and his bondsmen \$2,404 36, of which the sum of \$23 were costs advanced by the State.

In this suit against Blanding and his sureties, the complaint alleges that it was settled in the latter part of November, 1892, and was not dismissed or disposed of until the 7th day of February, 1893; that the total amount paid in settlement of said last mentioned action was one third of the sum of \$23,036 47, and in addition the costs and expenses, making a total of \$7,717 56.

Now, I think a portion of this money in this Blanding suit was paid August 1, 1891.

MR. DEVLIN: I would like to ask you, gentlemen [referring to the attorneys for General Hart], to give me a statement of the sums of money, and the times when they were paid, in *People vs. Blanding*?

GENERAL BARNES: I have nothing except what is in that complaint. I will furnish that, but I suggest that the committee take that complaint and put it in as part of their report.

MR. DEVLIN: Then I understand you are unable to give me the information that I ask you for now?

GENERAL BARNES: We will see that you get it.

THE CHAIRMAN: Are we to understand that the Attorney-General acknowledges the receipt of these moneys on the dates set forth in that complaint?

MR. DEVLIN: Well, his counsel do.

GENERAL BARNES: Here is his complaint, sworn to. And if he acknowledges that to this committee, that stops, as I understand it, any further necessity of going on with that branch of the inquiry. I assume that you have before you now a certified copy of his sworn complaint, which sets out the receipt by him of these moneys.

MR. DEVLIN: There is another serious question there. The gist of this offense is, that he has received public moneys and retained them for an unreasonable length of time. Now, in the *People vs. Blanding*, it would appear that he got nearly all that money in February of this year. Now, I understand a portion of that money was paid in 1891.

GENERAL BARNES: I have already stated, and I believe for the fourth time, that I will furnish the Chairman of this committee with a statement as to the payment, date, and amount of each item in the Blanding account.

MR. DEVLIN: I would like to ask Mr. Langhorne another question. How did you cease to be attorneys in those cases, or to act in the settlement of them? A. Well, if you will examine the Act passed by the last Legislature, you will see that the matter of the dismissal and settlement of the cases was left with the Attorney-General; and it was expressly provided that all moneys should be paid to him, for the use of the State. Consequently, the reason that I am unable to state in regard to the precise sums paid, and by whom paid, with the exception of the Quackenbush matter, is because when those settlements were made,

they were made with the Attorney-General. We were not notified to be present and we were not present. And I never thought of calling on the Attorney-General for any statement. Subsequently, in February of this year, the State Controller wrote to us and asked for a statement. I was very busy at the time, and my partner, Mr. Miller, undertook to furnish that statement; and this is the statement which he furnished, with his letter.

THE CHAIRMAN: You mean to the committee—that is the one you sent to the committee? A. The same statement was sent to the Controller, I suppose, in response to a demand for a statement from us.

MR. DEVLIN: What was the condition of those cases at the time this Act was passed in 1891? Had they gone to judgment? A. No, sir. The main case, the Phillips case, which was the largest case, had been partly tried before Judge Shafter, and the State's account had been admitted, which was a virtual victory for the State. The case was then referred to J. M. Scawall to take an account, and it was pending before him when the Legislature met and this Act was passed.

Q. Have you received any fees yet for your services in those cases? A. No, sir. I do not know as I ever will.

GENERAL BARNES: I understand the State Board of Harbor Commissioners is willing to pay your bill? A. Well, I have not had it yet.

Q. You have not asked for it. Did you ever make any communication to the State Board of Harbor Commissioners about these moneys, or any part of them? A. I do not remember now, General. I went down there once about my bill.

Q. Well, I did not ask you whether you ever went down there or not. I asked you whether you had written any letter to them? A. It is very possible I have.

Q. You do not remember? A. I do not remember, no.

Q. Now, allow me to show you a press copy of a communication dated the 30th of last September, and see whether you recognize your subscription to that document? A. Yes, sir. That is in regard to the settlement of the Knight matter.

Q. Who subscribed that? A. I did.

Q. Is that your handwriting? A. Yes.

GENERAL BARNES: I would like to read this in connection with the testimony of the gentleman.

General Barnes then read the letter as follows:

ATTORNEY GENERAL'S OFFICE, STATE OF CALIFORNIA,
SUPREME COURT BUILDING, 305 LARKIN STREET,
S. F. No. 1242. SAN FRANCISCO, September 30, 1892.

State Board of Harbor Commissioners, San Francisco, Cal.:

GENTLEMEN: After a number of sessions in reference to a settlement of the case of the *People vs. Knight* and others, I have been able to get the matter down to a fixed basis, upon which, if agreeable to all concerned, it can be settled.

Mr. Knight took office, November 23, 1882. At that time there was or should have been—

Cash on hand	\$11,861 53
Receipts—November 24, p. 208 C. B.	14,005 97
November 27, p. 210 C. B.	2,278 00
November 28-9, p. 212 C. B.	11,416 09
November 29, p. 214 C. B.	6,048 61
November 29, p. 216 C. B.	5,013 52
November 29, p. 218 C. B.	240 20
Total	\$50,863 92

Disbursements, not including payments to State Treasurer, as follows:

November 23, p. 203 C. B.	\$12,714 71
23-25, p. 205 C. B.	1,860 00
November 25, p. 207 C. B.	1,725 00
November 25, p. 209 C. B.	2,535 00
November 25-8, p. 211 C. B.	3,974 55
November 28, p. 213 C. B.	1,964 09
November 28-9, p. 215 C. B.	9,869 41
November 29, p. 217 C. B.	1,690 16
November 29, p. 219 C. B.	532 60
	\$36,865 52
Cash on hand, November 30	\$13,998 40

The books do not show any cash received between November 30, and December 6, 1882. Wells, Fargo & Co.'s books show there was shipped from San Francisco on December, \$21,963.38. This was paid into the State Treasury on the 6th or 7th of December—probably the 7th, leaving here on the afternoon of the 5th. Mr. Knight has heretofore claimed he should receive a credit for this whole payment, as it was paid out of moneys collected while he was in office. I have contended and still claim that Mr. Knight should not have credit for a greater sum than \$13,998 40. This would make the account as follows:

Cash on hand Nov. 23	\$11,861 53
Total receipts from Nov. 23 to March 28, pages 208 to 296, inclusive, C. B.	188,606 62
	\$200,468 15
Disbursements, not including amounts paid into State Treasury, pp. 203 to 283	\$122,251 16
To this should be added cash on hand at the time of remittance of the \$21,963 38	13,998 40
Also paid into State Treasury, viz.: Jan. 10	18,998 40
February 9	18,400 04
Shipped from San Francisco, March 8, 15, and entered on the Treasurer's books April 6	15,707 18
March 24, cash to successors in office, voucher 4,106, p. 296, C. B.	5,995 15
March 26, same	355 10
	195,705 43
	\$4,752 72
Of this amount Mr. Knight should pay one half	\$2,381 36
And costs advanced in the case by the State	23 00
A total of	\$2,404 36

Mr. Knight thinks he should pay only one third of the \$4,752 72, as there were three Commissioners, but I hold that he and his associates were each liable for the amount, and as Mr. Evans was not sued, Mr. Knight should pay at least one half of the portion Evans should have

paid. If it is satisfactory to the Board that I should accept the \$2,404 36 in full settlement of the suit, reserving the question as to the right of the State to the money, I will do so.

Yours respectfully,

WM. H. H. HART, Attorney-General.

We concur in foregoing.

LANGHORNE & MILLER, Special Counsel.

Q. Did you have any consultation with the Attorney-General about the settlement of any of these other cases? A. What other cases do you refer to?

Q. This is in relation to Mr. Knight's case; now in relation to the Phillips' settlement. A. No further than this: After the passage of the Act which I have spoken of, allowing him to settle them, the Attorney-General either wrote to me or spoke to me some time in the first part of June, I think it was, 1891, stating that although this Act had been passed, the defendants in those cases had not shown any anxiety to take advantage of it, and urged me to settle the things up. I accordingly wrote to the attorneys in all the cases. And the Attorney-General at the same time asked me what, in my opinion, would be the best method to pursue in settling the cases. I remember making the expression that I thought the liability ought to be divided into three parts; and he said, "Yes," he thought that that was about right. That is, there being three sets of bondsmen. And, so far as I understood, that matter was submitted to the bondsmen and they virtually agreed to it. I think the Attorney-General thought it better to leave it to the bondsmen themselves, as between the sureties on each bond in regard to that proportionate amount. There were about twenty defendants altogether, in those cases.

Q. Mr. Langhorne, who preceded you as attorneys in these cases? A. Messrs. Flournoy & Mhoon.

Q. Did you succeed them by substitution? A. No, sir.

Q. Had they rendered the services in the cases from the time they were commenced, in 1882 down to 1889, without your assistance? A. Yes; I had nothing whatever to do with the cases at all until December, 1889.

Q. Do you know what became of Flournoy & Mhoon; I mean as counsel, or as attorneys in the cases? A. Well, Colonel Flournoy, I think, had died about that time, if I remember right, and when I was employed I went over to Major Mhoon's office, and he had no objection to our coming into the cases—said he was very glad of our coming in—and we worked the evidence up, and got the cases in condition, and a great many defendants had died, and no claims had been presented against their estates, and we attended to that matter; got the cases in condition, and brought on this Phillips case first for trial.

Q. Does this bill of yours for \$3,000 include the services of Flournoy & Mhoon from the time the suits were begun down to the time when you came into them? A. No, sir; I only undertook to put in a bill for our own services.

Q. Then, so far as you are aware, Flournoy & Mhoon, or Mhoon as the survivor of the firm of Flournoy & Mhoon, have received no compensation for the services which they rendered during the years which the

suits had been pending? A. I understood there was a retainer paid them.

Q. Had you, either before or after the passage of the Act of 1891, authorizing a settlement and compromise of those cases by the Attorney-General, in his discretion, any doubt or question in your mind as to what fund the moneys, if paid, should go to? A. Yes, I had. I thought at first sight you would imagine those moneys would go into the Harbor Commissioners' Fund, but I came to the conclusion afterwards, looking into the matter, that they were in no sense Harbor Commissioner moneys, for the reason that the Harbor Commissioner Fund was made up of certain specific moneys. These were moneys in the nature of penalties recovered upon contracts made with the State and payable to the State.

Q. Then you were of two minds as to who was entitled to the money? A. Yes, I was until I looked into it.

Q. You had a first impression, and then, as you found upon subsequent investigation, you had another? A. Yes.

Q. And I understand that your last judgment, and presumably the best, was that they were moneys that should be certified into the General Fund? A. Yes, sir.

Q. In the nature of penalties, for the benefit of the State of California? A. Yes; in the nature of penalties recovered entirely upon contracts made with the State, and made payable to the State, to which the Harbor Commissioners, as a Commission, were not a party.

Q. You were present when this case to which we have been alluding here, was tried before Judge Levy? A. Yes, sir.

Q. You are aware what his judgment was in that case? A. Yes.

MR. DEVLIN: Mr. Langhorne, have you now, or did you ever have any doubt as to the person to whom those moneys should be paid, and as to who should decide to what fund they belonged? A. Well, I was never called on, Mr. Devlin, to give my opinion in regard to that.

Q. I am not asking you in regard to your opinion. I am asking you if you ever had an opinion on the subject. Have you ever had any occasion to doubt the person to whom those moneys should be paid? You have thought of the matter, have you not? A. Well, I have thought of the matter as a legal proposition, but the question has never been presented, either by the Attorney-General, or by any other person, to me.

Q. Well, what is your opinion as to the person to whom those moneys should be paid?

GENERAL BARNES: You mean his present opinion as to whom they should have been paid, or his opinion then?

MR. DEVLIN: Well, his opinion then? A. Do you mean into what fund?

Q. No, I mean the individual. Whether they should be paid to the Controller or Treasurer, or whether it was any business of the Attorney-General to determine as to what fund they should go into. As I understand it, you were asked by General Barnes if you had any views upon the subject as to what fund those moneys should go.

GENERAL BARNES: You are mistaken. I asked him if he had any doubt about it, and he said he had. First he thought one way and then he thought another.

MR. DEVLIN: Then I will ask you, have you ever had any doubt as

to whether or not the Attorney-General had a right to retain these moneys for the purpose of determining that question, or whether the moneys should not have been paid over to the Treasurer upon a certificate of the Controller? A. Well, I could only answer that question by saying that the Attorney-General never called upon me for any opinion nor asked me my opinion, as to whether he was justified in holding these moneys. I have heard him say frequently, however, that he was in doubt about the fund and that he intended to have a suit brought. That matter came up primarily when we asked him, "How are we going to get paid?" And he would say, "Well, if it is paid into this fund I will look out for your fee," and so on. And I was never asked by him, and did not assume to advise him, as to whether or not it was his duty, as Attorney-General, to hold the money out until that question was determined.

Q. I am not asking you what the Attorney-General asked you to do; I am asking you if you had any opinion upon the subject, and if so, what it was on the legal proposition? I am asking you for the benefit of the committee here. A. Well, of course, my opinion is that the Controller of the State is the only person, under the statutes, to determine the funds into which any public moneys should go. I do not think that the collector of moneys would be liable, or his bondsmen liable, if the Controller made a mistake in certifying any moneys to the wrong fund. That is my legal opinion about it.

GENERAL BARNES: Mr. Langhorne, are you giving this as the opinion which you formerly entertained, or your opinion now, based upon the inquiry of the counsel for the committee? A. Well, really, I did not think much about it until this matter came up before the committee.

Q. Do you know in what way moneys are paid into the General Fund, certified by the Controller into the General Fund, can be got out of it again? A. Well, they could be gotten out by an Act of the Legislature.

Q. They can? A. Yes.

Q. Do you know of any provision of law in this State by which moneys, once paid into the General Fund, can be drawn out by any special Act whatever? A. I have never had any occasion to look into it, but I should think the Legislature could do it.

Q. Suppose I should astonish you by showing you a provision of law declaring that moneys paid into the General Fund of this State should not be legislated out again, would that modify your views as to Mr. Hart's liability? A. No.

Q. If that money belonged to the Harbor Improvement Fund, and Mr. Hart paid it to the Controller to be certified to the General Fund of the State, do you think that that would be an answer to a suit brought for that money? A. Well, in the first place he could not—

Q. Just answer that question. Do you think it would be an answer: That he paid the money to the Controller? A. In the first place, you state if the General paid it to the Controller; you said if he paid it to the Controller, to be paid into the General Fund. I do not understand that the Attorney-General has any control over the fund. That is a question for the Controller. Now if, as a matter of fact, the Controller should make a mistake by certifying it to the wrong fund, that would be the Controller's mistake.

Q. You, perhaps, do not understand me. A. Admitting that you are

right, that it could not be transferred by legislation, or that no Court would have a right to mandamus the Controller to transfer it to the proper fund from the General Fund—admitting that you are right about that—it would be the Controller's mistake and not the mistake of the collector.

Q. Perhaps my mediocrity does not enable me to make my proposition plain to your mind. If you will give me your attention, we will see. Do you know whether or not the California Constitution has any provisions in relation to the moneys paid into the General Fund? A. I do not recall now.

Q. You do not know? A. I have not examined it with that view.

Q. Then let me call your attention to Section 25 of the California Constitution of 1879, Subdivision 15: "The Legislature shall not pass special laws in any of the following enumerated cases—that is to say, refunding money paid into the State Treasury." Now, suppose Mr. Hart, instead of bringing suit the day after this money was paid, for the purpose of settling the question between himself and the State, and between himself and the Harbor Commissioners, as to which was entitled to that money, had gone in the first instance and turned it over to the Controller to be certified into the General Fund, would the fact that he had disposed of the money alter his liability in case the money belonged to the Harbor Improvement Fund in the hands of the Board of State Harbor Commissioners? A. How do you mean? What do you mean by disposed of the money?

Q. Suppose he had turned it into the State Treasury? A. Why, then, he would have done his duty.

Q. Suppose he had been then pursued by the Board of State Harbor Commissioners for the funds, and it had been decided that it was their money? A. I would not want any better case to defend if the Harbor Commissioners brought suit against him and his bondsmen for the money turned into the State Treasury. They could not possibly prevail in that suit.

Q. That is your legal opinion? A. Yes. Not only that, but in the Bunker case or the Van Ness case—I forget which—there were adverse claimants. Mr. Bunker claimed that the Pacific Mail Companies had claimed this money—the emigration fees. There in that case there were adverse claimants—not a case in which the question of which fund in the State Treasury the money went—and the Supreme Court held that the collector there had to pay to the State Treasury, although there were adverse claimants.

Q. What case was that? A. I think that was the Bunker case. Either that or the Van Ness case.

Q. Reported where? A. I forget the report. I can find it for you.

Q. Were you in the Van Ness case? A. Yes, sir; I had both cases for the State.

Q. Do you know what was decided in the Van Ness case? A. Well, there were two cases went to the Supreme Court. The case against him singly, for conversion, was finally lost on the ground of statute of limitations. The other case was sustained and the money subsequently collected. And I think it was in that case that he made the point that he had collected certain fees improperly and paid them into the State Treasury.

Q. Do you remember the volume in which the Van Ness case was

reported? A. No, sir; I do not. I think though, it is somewhere in the seventies.

MR. DEVLIN: Since you have been asked your opinion on some matters of law, Mr. Langhorne, I will ask you if you consider that provision of the Constitution referring to the prohibition of the Legislature refunding any money has any application to moneys paid into one fund, and then the Legislature ordering it paid into another fund of the State Treasury? A. I do not think it has. Every Legislature passes laws refunding money. Now, as to the moneys that were paid into the Emigration Fund, collected by the State, there is a bill pending now to pay that into the General Fund. That, I think, means repayment rather than refunding, under the Constitution.

THE CHAIRMAN: We desire to find out now when these moneys were paid to the Attorney-General, and then we want to find out whether he was justified in withholding them from the State Treasury until some Court decided to what fund it belonged, and we would like to examine Mr. Hart on that subject as a witness.

GENERAL BARNES: Well, I do not think that Mr. Hart's position is one that entitles him to be called as a witness. He wants to do it, but his counsel have consulted about it, and we have objected, and do now object to his being called as a witness here for the prosecution in the form which it has taken. We have no feeling about it. It is simply a difference in the understanding of the nature of the investigation; that is all.

GENERAL BARNES: We would like to have the findings and this decree put on file in this matter.

The findings and decree are in the words and figures as follows, to wit:

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE ex rel. W. H. H. HART, Attorney-General, Plaintiff,
vs.

BOARD OF STATE HARBOR COMMISSIONERS, et al., Defendants.

FINDINGS.

This cause having been called regularly for trial before the Court sitting without a jury, Wm. H. H. Hart, Attorney-General, appeared in pro. per., with W. H. L. Barnes, Esq., of counsel; J. A. Barham and A. E. Bolton, Esquires, appeared for E. P. Colgan, as State Controller; and F. S. Stratton, Esq., appeared for the defendants, the Board of Harbor Commissioners, and F. C. Bassett, C. O. Alexander, and W. H. Brown, as members of said Board; and the Court having heard the proofs of the respective parties, and considered the same, and the records and papers in the cause, and the arguments of the respective attorneys thereon, and the cause having been submitted to the Court for its decision, the Court now finds the following facts:

I.

That prior to the commencement of this action, the said W. H. H. Hart, in and by virtue of his office as Attorney-General of the State of California, and under and in pursuance of the provisions of an Act of

the Legislature of the State of California, entitled "An Act authorizing the Attorney-General to dismiss those certain actions pending in the Superior Court of the City and County of San Francisco, and numbered eleven thousand seven hundred and six, eleven thousand nine hundred and twenty-five, and eleven thousand nine hundred and twenty-six, upon payment to him for the use of the State of certain moneys," approved March 31, 1891, and contained in the Statutes of 1891, page 268, did compromise and settle the certain actions referred to in said Act, by receiving from W. A. Phillips, William Blanding, and W. H. Knight, and their respective bondsmen, their just proportion of a certain sum then claimed to be due by said Phillips, Blanding, and Knight, and their respective bondsmen, and amounting in all to the sum of \$17,847 74, which said sum of money from the time the same and every part thereof was received by said Hart has remained and continued in his possession as Attorney-General as aforesaid.

II.

That the said Hon. E. P. Colgan, as Controller of the State of California, has claimed and insisted at all times that said sum of \$17,847 74, so received and collected by said Hart as aforesaid, should of right be certified by said Colgan, and deposited in and made a part of the General Fund of the State of California; and that the said Board of State Harbor Commissioners has also at all times claimed and insisted that said sum so received and collected by said Hart, as Attorney-General as aforesaid, should of right be paid to said Board of State Harbor Commissioners as a part of the San Francisco Harbor Improvement Fund.

III.

That said W. H. H. Hart has this day, pursuant to the order of this Court, delivered to the Clerk of this Court the sum of \$17,847 74, the same being the full amount received and collected by him pursuant to the provisions of the Act of the Legislature hereinabove referred to.

IV.

That the said sum of \$17,847 74 properly should be and is a part of the San Francisco Harbor Improvement Fund, in charge and control of the Board of State Harbor Commissioners.

V.

That the said defendant, E. P. Colgan, as Controller of the State of California, has no authority, or is not entitled to certify said sum of \$17,847 74 into the State Treasury to the credit of the General Fund, and the same or any part thereof does not belong to, and should not be paid into said or any other fund.

VI.

That the allegations of said complaint are all and singular true, except so much of the statement contained in paragraph XVII of the complaint, wherein it is alleged "that the moneys so collected as aforesaid were and still are the property of the State of California, and

should be paid into the State Treasury to the credit of the General Fund for the use of the State, and that no part of said moneys belong to or should be paid to the credit of the San Francisco Harbor Improvement Fund," which allegations the Court finds to be untrue.

VII.

That as to the allegation in paragraph XIV, the Court finds the facts to be, that as to the amount of money shown by the cash books of said Board of State Harbor Commissioners before the passage of the Act set out in the complaint, upon an investigation by the Senate Committee, to whom said Act was originally referred, the amount shown to be a deficit, according to the cash book kept by the Secretary of said Board, was by said committee found to be \$23,036 47, and settlements were made with said Phillips and his bondsmen, and a portion of the bondsmen of William Blanding on a basis of the deficiency as found by said Senate Committee.

That thereafter, on further examination of said cash books of said Board of Harbor Commissioners, the said W. H. H. Hart discovered a credit which reduced the amount, as shown by said books, to the sum of, to wit: \$16,686 22, which amount is the amount shown by said cash books kept by the Secretary of said Board of State Harbor Commissioners to have come into the possession of said Board during the time alleged and set forth in said complaint and in said Act of the Legislature herein set out.

VIII.

That the total amount received and collected by said W. H. H. Hart, as Attorney-General of the State of California, under and in pursuance of the provisions of the Act of the Legislature last above referred to, was the sum of \$17,847 74.

And the Court finds as conclusions of law: That the defendant, the Board of State Harbor Commissioners, is entitled to have and receive from said W. H. H. Hart the sum of \$17,847 74, and that the said State of California is not entitled to receive the same or to have any part thereof paid into the General Fund of the State, and the Clerk of this Court shall be, by decree of this Court, ordered and adjudged to pay said Board of State Harbor Commissioners said sum so received as aforesaid by him from said W. H. H. Hart.

Let decree be entered accordingly.

Dated February 17, 1893.

WALTER H. LEVY, Judge.

I, M. C. Haley, County Clerk of the City and County of San Francisco, State of California, and ex officio Clerk of the Superior Court in and for said city and county, hereby certify the foregoing to be a full, true, and correct copy of the original findings in the above entitled cause, filed in my office on the 17th day of February, A. D. 1893.

Attest my hand and seal of said Court this 17th day of February, A. D. 1893.

[SEAL]

M. C. HALEY, Clerk.

By W. J. FITZGERALD, Deputy Clerk.

[Marked Exhibit No. 14.]

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE ex rel. W. H. H. HART, Attorney-General, *Plaintiff*,
vs.
BOARD OF STATE HARBOR COMMISSIONERS, et al., *Defendants*.

DECREE.

This cause coming on regularly for trial this sixteenth day of February, 1893, W. H. H. Hart, Attorney-General, appeared in pro. per., with W. H. L. Barnes, Esq., of counsel; Messrs. Barham and Bolton appeared for Hon. E. P. Colgan, State Controller, and F. S. Stratton, Esq., appeared for the defendants, the State Board of Harbor Commissioners, and C. F. Bassett, C. O. Alexander and W. H. Brown, as members of said Board; and a jury having been duly waived, the cause was tried by the Court without a jury, witnesses were duly sworn and examined and documentary evidence introduced, whereupon after hearing the evidence and arguments of counsel, the cause was submitted to the Court for its findings of fact and conclusions of law, and the Court having thus signed and filed its findings of fact and conclusions of law, hereby judgment is ordered that said sum of \$17,847 74 be paid to the Board of State Harbor Commissioners as a part of, for the purpose of the San Francisco Improvement Fund.

Therefore, by virtue of law and by reason of the premises, it is ordered, adjudged, and decreed that the Board of State Harbor Commissioners do receive from the Clerk of this Court the sum of \$17,847 74, heretofore paid into Court by said W. H. H. Hart, Attorney-General of the State of California, as aforesaid, and the said Clerk of this Court is hereby ordered and directed forthwith, upon the signing of this decree, to pay the said sum to the said Board of State Harbor Commissioners, or its attorney, F. S. Stratton; and it is further ordered and adjudged that the State Board of Harbor Commissioners pay the costs and disbursements of this proceeding, taxed at \$——.

San Francisco, February 17, 1893.

WALTER H. LEVY, Judge.

I, M. C. Haley, County Clerk of the City and County of San Francisco, State of California, and ex officio Clerk of the Superior Court in and for said city and county, hereby certify the foregoing to be a full, true, and correct copy of the original decree in the above entitled cause, filed in my office on the 17th day of February, A. D. 1893, in judgment book 18, page 163, Department No. 10.

Attest my hand and seal of said Court, this 17th day of February, A. D. 1893

M. C. HALEY, Clerk.

By W. J. FITZGERALD, Deputy Clerk.

Indorsed: Filed February 17, 1893.

M. C. HALEY, Clerk.

By W. J. FITZGERALD, Deputy Clerk.

[Marked Exhibit No. 15.]

E. P. COLGAN.

Sworn.

MR. DEVLIN: What is your name? A. E. P. Colgan.

Q. What official position, if any, do you occupy? A. State Controller.

Q. How long have you been such? A. Twenty-six months, lacking a few days.

Q. Will you state whether you have made any demand upon W. H. H. Hart, Attorney-General, for a payment into the State Treasury of moneys collected by compromise of certain suits brought by the People of the State of California against the former Harbor Commissioners and their bondsmen? A. I did.

Q. When did you make the demand? A. I think the 6th of February.

Q. What year? A. 1893.

Q. Was the demand complied with? A. No, sir.

Q. Did you make it in writing? A. I did.

Q. Have you got the written demand with you? A. I think I have a copy of the demand.

Q. Present it, please. A. I have not got a copy of that letter with me; I thought I had it.

Q. Have you got a copy in your office? A. Yes; I have.

Q. I will just drop that for a moment and ask you to get it. Had you made any prior demand? A. Not for that particular money; no, sir.

Q. Had you made any prior demand for any money? A. I do not know whether you would call it a demand or not. I wrote to the Attorney-General in June, I think, 1892, asking for a statement of moneys that I had been informed he was supposed to have collected, under the provisions of the Statutes of 1891, under that Act, and I received an answer from him.

Q. Were you writing about these same moneys? A. I wrote for a statement—no, I do not know as it was these same moneys; but I was just closing up the fiscal year and getting our report ready and I sent a communication to the Attorney-General asking for a statement from him of the disposition of some of those cases; there were several cases—not only the Harbor Commissioners cases, but I think the case of Curran, and one thing and another, that he was authorized to settle; and we wrote to him about them. We wanted to get them in our report at the close of June, 1892.

Q. You got a reply, I suppose? A. Yes.

Q. Is that reply in your office? A. I think I have that with me; I thought I had the other, too.

Q. Have you got a copy of the letter that you sent him? A. Yes, I think I have a copy of the letter that I sent him, too. [Producing them.]

Q. Is that a correct copy of the letter that you sent to General Hart? A. I believe it is.

Q. It is intended for a copy, is it? A. Yes; it is a copy.

Q. Is the other that you hold in your hand the reply that you received from him? A. Yes.

Q. Well, please read to the committee the correspondence. A. The whole of it?

Q. Yes; your letter and his reply.

Witness read as follows:

MAY 31st.

Hon. W. H. H. HART, Attorney-General, Sacramento:

DEAR SIR: The last Legislature authorized you to compromise and dismiss certain actions brought by the State against the bondsmen of certain defaulting State officers (Stats. 1892, 268-467-182). I was advised that acting under this authority you have compromised some of these suits, and are in receipt of moneys which should be paid into the State Treasury. As the present fiscal year closes on June 30, prox., and immediately thereafter I make up my biennial report, I respectfully request that you make your settlement with the State as soon as possible, in order that these items may appear in their proper place in my forthcoming report.

Very truly, etc.,

E. P. COLGAN, Controller.

[Marked Exhibit No. 3.]

Wm. H. H. Hart, Attorney-General; Wm. H. Layson, First Deputy; Oregon Sanders, Second Deputy; Charles H. Jackson, Third Deputy; Albert Betz, Reporter; M. S. Hedden, Clerk.

ATTORNEY-GENERAL'S OFFICE, STATE OF CALIFORNIA,
SUPREME COURT BUILDING, 305 LARKIN STREET,
S. F. No. 922. }
SAN FRANCISCO, June 25, 1892. }

Hon. E. P. COLGAN, State Controller:

DEAR SIR: Replying to yours of the 31st ult.: First—*In re* the claim of the State against the estate of Michael Curran (Stats. 1891, 182), I have not done anything for the reason the other creditors claim the right to the estate. Unless they remit their claims, or a portion of them, I will not exercise the discretion mentioned in the Act. Second—*In re* the Act referred to on page 467, Stats. 1891, nothing has been done, as they think the case should be dismissed without the payment of anything whatsoever to the State. I do not see it in that light.

In re Act on page 268, the matter has been settled as to one of the defendants, partially settled as to another, and nothing has been accomplished as to the balance. I have spent over a week since receiving your letter endeavoring to close it, but it is now claimed by all concerned that the \$15,087 99 was remitted to Sacramento, received by W. A. January, and stolen by him; that it was never entered in the books, Gray having left California before he got the order from the Controller certifying it into the treasury. Again, it is claimed that the \$11,022 78 was paid over to the successors of the defendants, named in the Act, for which no credit was given. I recently spent a great deal of time investigating the books of the Harbor Commissioners, and find their statement in this respect true. Investigation is now being made of the express company's books at Sacramento, to determine whether these two contentions are true; if true, the defendants claim there is nothing due the State from them.

I claim that the money, when paid, should go into the General Fund, but Mr. Stratton, attorney for the Harbor Commissioners, contends it should go to that Commission, and that the State has nothing to do

with it. We have agreed, as soon as the settlement is made, to submit this question to the Court, and we hope it can be done before long.

Yours, respectfully,

Wm. H. H. HART, Attorney-General.

[Marked Exhibit No. 4.]

(Witness, continuing): In my letter reference is made to Statutes of '92; it must have been the Statutes of '91, because we haven't any Statutes of '92.

Q. Had you any further correspondence with him upon that subject?
A. I sent another communication to him, dated the sixth of February, I believe.

Q. That is the one you have not got? A. I haven't it with me.

THE CHAIRMAN: That was the letter in obedience to the resolution passed by the Assembly directing you to call on him for that money?
A. Yes.

Q. Have you got a copy of it? A. I know I have a copy of it in my letter-book.

MR. DEVLIN: I can ask you some other questions, and you can get that afterwards. As I understand you now, it was a demand made on the 6th of February? A. Yes.

Q. What I was getting at was, have you had any further correspondence with the Attorney-General besides this letter that you wrote and the reply you received and just read, and the demand that you speak of, and his reply thereto? A. Not in regard to those Harbor Commission cases; no.

MR. DEVLIN: I desire now to offer in evidence the letter of the Controller to the Attorney-General and the reply of the Attorney-General thereto.

Q. Did the Attorney-General ever make a statement to you of the specific amounts of money that he received in those different cases, giving the dates of receipts? A. No, sir.

Q. Did you know about it? A. Not until I was served with that summons.

Q. When was that? A. I think it was about 9:30 on the night of the 7th of February.

Q. When did you first learn that the Attorney-General had in his hand moneys collected in these cases? A. Moneys in his hands?

Q. Yes? A. Well, the first information, I think, that I had, that he had any moneys in his hands, was when I received—that is, anything that I could introduce as evidence—a communication from Mr. Miller.

Q. About when was that? A. That was the same communication that was introduced here, or a copy of it, introduced a few moments ago.

THE CHAIRMAN: February 4th? A. February 4th. I have the letter though, to be sure of it.

THE CHAIRMAN: This is one addressed to me. A. February 4th is the date of the letter.

MR. DEVLIN: 1893? A. Yes.

Q. Who was that letter from? A. That letter is from J. H. Miller.

Q. Well, just read it to the committee.

The witness read as follows:

Estee, Fitzgerald & Miller, Attorneys and Counselors at Law, 419 California Street. John H. Miller, W. F. Fitzgerald, Morris M. Estee. P. O. Box 2270.

SAN FRANCISCO, Cal., February 4, 1893.

Hon. E. P. COLGAN, *State Controller, Sacramento, Cal.*:

DEAR SIR: I have had some difficulty in getting the data you wish in the Harbor Commissioner cases, but have at last gotten them. They are as follows:

MONEYS RECEIVED BY ATTORNEY-GENERAL HART IN HARBOR COMMISSIONER CASES, UNDER ACT OF LEGISLATURE, MARCH 21, 1891.

1891—July 25th, from case of People vs. Phillips, No. 11,706, Superior Court, San Francisco	\$7,725 82
1891—August 1st, from case of People vs. Blanding, No. 11,925, Id.	6,601 56
1892—October 25th, from case of People vs. Knight, No. 11,925, Id.	2,404 36
1892—November 25th, from case of People vs. Blanding, No. 11,926, Id.	1,120 00
Total	\$17,851 74

Very truly yours, etc.,

J. H. MILLER.

[Marked Exhibit No. 5.]

Q. How did that letter come to be written? Was it in reply to one sent by you? A. Yes.

Q. Have you a copy of the one you sent, with you? A. No, sir.

Q. Where is it? A. It is in the letter-book in my office.

Q. I will ask you if there is such a fund known as the State Harbor Fund? I do not know the technical name for it. A. The San Francisco Harbor and Improvement Fund.

Q. Where is the money belonging to that fund kept? A. The money is kept in the State Treasury.

Q. How are moneys, coming into that fund, paid, under this law, into the treasury? A. They are paid through the Harbor Commissioners.

Q. Is there such a fund upon your books? A. Yes.

Q. Do you keep an account with it? A. Yes.

Q. How are moneys drawn out of that fund? A. By orders drawn by the Harbor Commissioners on the Controller and approved by the State Board of Examiners.

Q. I will ask you, also, the legal question, to get at it a little easier perhaps—when money is due to the State of California from any source, and no special way is provided for its payment, how is it paid? What is done with it? A. Nothing specifying where the money shall go?

Q. No, I do not mean where the money shall go, but to what particular individual should it be paid—moneys due the State? A. Well, they have to go through the Controller's office.

Q. In what way? A. By a notice to the Controller, or request that the party has money which he wishes to pay into the State Treasury, asking for an order to pay to the State Treasury certain moneys.

Q. Then the Controller makes out an order, does he? A. Yes.

Q. Directing that the Treasurer receive the money? A. Yes.

Q. Then how is the money actually received by the Treasurer? A.

The money is actually received by the Treasurer on the authorization from the Controller, ordering moneys into the treasury.

Q. Then what becomes of that order? A. The order is delivered to the Treasurer; he issues to the party a receipt, which is brought back to the Controller, and the Controller gives the party a discharge, and keeps the Treasurer's receipt on file in his office.

Q. Who determines the fund to which the money shall be entered on the books? A. The Controller does.

Q. Does he make such an entry upon the order? A. Yes; he has to set forth where the money goes before the Treasurer takes it.

MR. DEVLIN: Now, you may go and get those letters.

[The witness docs as requested.]

Q. Have you those letters now, Mr. Colgan? A. Yes, I have, sir.

Q. They are correct copies, are they, taken from your letter-book? A. Yes, press copies.

Q. Just read them to the committee.

THE WITNESS: Now Mr. Chairman, I would like to state that I do not think I wrote to Mr. Miller, since the matter has been refreshed in my mind. Mr. Miller was present in Sacramento, and I asked him for a statement.

THE CHAIRMAN: See if this will not refresh your memory? A. I have got it now all right; I know it now myself.

THE CHAIRMAN: As a matter of fact, the Committee on Ways and Means sent a letter to him, and I think the letter to you was in the identical language to the reply that we got. I think he wrote to the Controller at the same time.

GENERAL BARNES: At any rate, it is corrected. The witness says he does not remember writing to Mr. Miller, but that is the statement that he got.

MR. DEVLIN: Get the letter of February 6th; the demand on the Attorney-General.

MR. SIMPSON: Where funds were due to the Harbor Commissioners, what has been the habit of your office and the Treasurer and of the parties who have payments to make, or funds to go into that? Is there ever a case where they pay directly to the Harbor Commissioners themselves? A. Yes, sir. I will state, from what experience I have had and what I know about the office, there is no money that goes into the Harbor Improvement Fund, only through the Harbor Commissioners. It is supposed to be a self-sustaining fund, and they derive certain moneys from the collection of tolls, wharfage, etc., which are paid directly to the Commissioners; and then they have their expense account, rents and salaries, and one thing and another, which they pay out of those moneys, and report to the Controller the first of every month. Make a statement showing the receipts and disbursements, and sending in the balance of the money. They are accumulating moneys all the time, and they send the balance of the money to the State Treasury, when we get our report; sometimes through the bank of Wells-Fargo, and the one who comes to make their settlement comes to my office and gets his order or authorization to pay the money into the Treasury; goes in with the order, pays the money, gets the Treasurer's receipt, comes back to us and gets his discharge. The money all really goes through the Harbor Commissioners' hands, and I think that is where they belong.

Q. Now, tell me, what was the nature of these suits that were ordered to be compromised by General Hart? For what purpose? A. Well, those matters came up long before my time. They started away back in 1880, somewhere. Moneys had been embezzled by the Collectors, but I do not know anything about that only from the records I have got.

MR. DEVLIN: Now, this letter of February 6th; just read that. The witness read, as follows:

FEBRUARY 6th.

Hon. W. H. H. HART, Attorney-General, Sacramento:

DEAR SIR: I am in receipt of a statement from Messrs. Langhorne & Miller, the attorneys employed by ex-Attorney-General Johnson, in the suits against ex-Harbor Commissioners Phillips, Blanding, and Knight, and their bondsmen, showing the amounts collected under the Act of the Legislature, approved March 31, 1891 (Statutes 1891, page 268), and now in your possession. The amounts are as follows:

1891—July 25—From case of People vs. Phillips, No. 11,706.....	\$7,725 82
1891—August 1—From case of People vs. Blanding, No. 11,926.....	6,601 56
1892—October 25—From case of People vs. Knight, No. 11,925.....	2,404 36
1892—November 25—From case of People vs. Blanding, No. 11,926.....	1,120 00
Total.....	\$17,851 74

I respectfully request that you pay these moneys into the State Treasury at the earliest possible moment.

Very truly,

E. P. COLGAN, Controller.

[Marked Exhibit No. 6.]

Q. Where is that letter addressed? To what place—San Francisco? A. No sir, it was addressed to the Attorney-General at Sacramento.

Q. Did you deliver it to him personally, or what did you do? A. Mr. Douglas took it from my office to his office. I do not know who he left it with. I know it was taken into the office; that is all I can say.

GENERAL BARNES: We received this letter from the gentleman.

MR. DEVLIN: Well, there is no question about General Hart getting the letter.

GENERAL BARNES: None at all.

MR. DEVLIN: We offer this letter in evidence and also the letter of Mr. Miller.

Q. Was any reply made to you? A. Yes—no; I don't know whether he made a reply. I do not know as he made a reply to that letter or not, without looking it up.

GENERAL BARNES: You were served with a summons? A. I was served with a summons, yes, to a suit. I suppose this is considered as a reply. I do not remember getting a letter from him.

MR. DEVLIN: Was the letter that you received from Mr. Miller, February, 1893, the first intimation that you had purporting to give the specific amounts and dates of the receipt of this money by the Attorney-General? A. Yes; that is the first information I had of the dates, or of the actual amounts, or of the amounts as set forth there.

Q. How did you come to learn that there was any money in the Attorney-General's hands collected in any of these suits, at any time?

A. Well, I never knew there was any money in his hands, as an actual fact, until he showed me that he had it.

Q. How did you come to inquire about it? A. Well, we appeared before the Ways and Means Committee and a gentleman had a claim up there for his services as an attorney, and I was asked by the Chairman of the committee where those moneys were. I told him that I did not know, that they had never been paid to me.

Q. What date was that? A. I do not remember the date of that.

Q. Well, you mean the present session? A. Yes.

Q. Some time this year, 1893? A. Oh, it was along about the first of February, I should think—either Friday or Saturday—along about the first.

Q. Was that the first time that any fact was ever called to your attention to put you upon inquiry as to whether or not the Attorney-General had collected these moneys? A. Yes, sir; that was the first time that I ever had any evidence that caused me to believe he had any moneys in his possession.

THE CHAIRMAN: Do you remember whether your letter was addressed to the Attorney-General immediately after the adoption of the resolution by the Assembly calling upon you to demand the money? A. The letter was addressed and was dated previous to my receiving any resolution; but, at the same time, I knew that the resolution had been introduced, but I had no official knowledge of it.

MR. DEVLIN: Has the money been received and paid into the State Treasury yet? A. This money?

Q. Yes. A. No.

GENERAL BARNES: Mr. Colgan, you were aware, were you not, of the pendency of these suits against the bondsmen of Blanding, Phillips, and Knight for the collection of the penalties of those bonds; such amounts as accrued under them? Do you know anything about those suits? A. I do not know as I know anything about them that I could give in testimony. I had information that such cases were pending.

Q. When did you first know there were any suits pending against Blanding, Knight, and Phillips and their bondsmen? A. Well, I have known it ever since I have been in the office.

Q. When did you first learn, if you ever did learn, until recently, of the passage of the Act of 1891 authorizing the Attorney-General to enter into negotiations for the purpose of a compromise of those long-pending actions? A. I knew it when it was passed.

Q. At any time after the passage of that Act did you have any communication with the Attorney-General about those cases? A. The communication that I just read a few moments ago, yes.

Q. Do you mean the one of last May? A. May 31st.

Q. May 31, 1892? A. No, I do not know whether it is May or June, now. It was the communication where I asked for a statement in regard to those cases.

Q. Was it, as you understood it, a part of the Attorney-General's business to report to you what he did under an Act which conferred powers upon him alone? A. Yes.

Q. Won't you explain that? A. I consider it is the duty of any State officer that has any moneys, or recovers any moneys, to report to the Controller within a reasonable time what amounts of money he has in his possession, and turn them into the treasury.

Q. Suppose they are moneys that are not to be turned into the treasury; suppose they are, for instance, county moneys? A. They have the same rights, sir.

Q. You have the same rights? A. Yes; any county officer that is handling moneys, or has the handling of any money.

Q. Does the law, then, require him to report to you the progress and condition, settlement, and collection of all moneys when they are collected? A. When they are collected, yes. I do not know as it requires him to report the progress he is making in the case; but when he has any moneys he should.

Q. Will you kindly refer me to any section of the Political Code that confers such powers upon you? A. General, you will find that under the general provisions of the Code in regard to the Controller's duties.

Q. I asked you if you could call my attention to any particular section of the Political Code that requires all persons having any litigation in progress to report to you? A. No, I don't think that I know of any such section of the Code as that.

Q. Is there any particular section to which you desire to refer in support of the statement you have just made as to the duty of a party? A. Section 15, Article VI, the general duties of the Controller: "In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the State of which an account is kept in his office, to render statements thereof to him; and all such persons must render such statement at such times and in such form as he may require." There is another section in reference to the Superintendent's collections and the direction.

Q. That, then, is the section to which you refer as making it the duty of the Attorney-General to inform you what is done in these cases. Is that so? A. Well, that is one of the sections.

Q. Any other? A. I do not know as I can recall any of the others particularly just now.

Q. You say that the first statement that you got was from Mr. Miller, which was furnished you without any written request. Now, I will ask you if, prior to the receipt of that information from Mr. Miller, you had ever, at any time, required of Mr. Hart, as one who had received moneys or securities, to render any statement thereof to you? Did you ever ask of him to return to you any statement of the moneys collected in those suits? A. I did not know—I asked for a statement. I think this is the communication I sent to the Attorney-General first, asking for a statement.

Q. I understand you to say that the first information you had was obtained from Mr. Miller? A. You misunderstood me, General. I said the first information that I had that the Attorney-General had any moneys.

Q. That is what I understood. A. That is, that I knew that he had any moneys. Of course, I did not know that only by his statement, until the Attorney-General showed his certified check afterward.

Q. Did you ever, except as you have mentioned, make any demand whatever upon General Hart for moneys, or for any accounting in the matter of these suits against the bondsmen of the Harbor Commissioners? A. I do not remember whether I did or not, sir.

Q. In your letter of May 31, 1892, of which you have produced here a copy, you say: "Dear Sir: The last Legislature authorized you to

compromise and dismiss certain actions brought by the State against the bondsmen of certain defaulting State officers (Stats. 1892, 268, 467, 182). I am advised that acting under this authority you have compromised some of these suits and are in receipt of moneys which should be paid into the State Treasury." What did you mean by that? A. Well, sir, I meant by that, there were two other cases that the Attorney-General settled. One is the Curran case, which has been settled since that letter was written, and another case where some money had been paid in.

Q. That observation had no reference to the Harbor Commission cases? A. No, sir; not directly. It was simply calling for a statement—a statement in total of all moneys.

Q. I understood you to say first that you did make a demand on him for a statement about these moneys in your letter of May 31, 1892. Now, when I refer to the language used by you in your letter, you say that the language in that letter did not refer to the Harbor Commission suits at all? A. Yes; it refers to all those cases. We took them all under the Statutes of 1891, the statutes authorizing him to make the settlements.

Q. I asked you, if at that time any portion of this demand referred to the Harbor Commission suits, or whether you had that in mind? A. Yes, I had, because that set forth the acts there. We did not make any demand for any amount of moneys, because we did not know what moneys the Attorney-General had.

Q. As I understand, you would not have received any moneys anyhow. The money would not have been paid to you at all? A. Not the way the thing has turned out, no.

Q. It would not, anyway. If Mr. Hart had desired to pay these moneys into the State Treasury, he would have simply got an order from you to the Treasurer to receive the moneys from him and credit it to a certain account? A. Yes; that is a fact.

Q. The moneys would not go through your hands at all? A. No, sir; we handle no moneys. I think that letter states that it should be paid into the treasury and not to me. Of course we wanted this, to make up our report. Does it not state so at the bottom?

Q. It says the moneys shall be paid into the State Treasury? A. Yes, that is it. It was not to come to me.

Q. You were present at this suit that was commenced by Mr. Hart and you answered, did you not? A. Yes.

Q. Look at the document now shown you and state whether that is not your answer, or a copy of the answer, that you put in, in that case—the People on the relation of Hart against yourself and the State Board of Harbor Commissioners? A. Yes; that is all right.

GENERAL BARNES: In connection with the testimony of the witness, Mr. Chairman, I will submit the answer of Mr. Colgan as part of the pleadings in this case.

THE CHAIRMAN: Very well.

GENERAL BARNES: And also, in the same connection, I will offer the answer of the Board of Harbor Commissioners in the same case.

The answer of Mr. Colgan and the answer of the State Board of Harbor Commissioners, just referred to by General Barnes, are as follows:

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, upon the information and complaint of WM. H. H. HART, as Attorney-General, *Plaintiff*,

vs.

BOARD OF STATE HARBOR COMMISSIONERS, and C. F. BASSETT, C. O. ALEXANDER, and W. H. BROWN, as members of said Board of State Harbor Commissioners, and E. P. COLGAN, as State Controller, *Defendants*.

Comes now the defendant, E. P. Colgan, as Controller of the State of California, and for answer to plaintiff's complaint alleges:

That at the time of the passage of the Act of the Legislature of the State of California, alleged and set forth in plaintiff's complaint, to wit: on the 31st day of March, 1891, he is informed and believed that it appeared by the cash books kept by the Secretary of the Board of State Harbor Commissioners, that the amount which had come into the possession of said Board, and which had not been paid into the treasury between the dates alleged and set forth in the plaintiff's complaint herein, to wit: between January 1, 1880, and March 21, 1883, was and is the sum of \$23,036 47.

Said defendant E. P. Colgan, as such Controller, as aforesaid, denies that by virtue of the Act of the Legislature aforesaid, alleged and set forth in plaintiff's complaint, or by any Act, the Attorney-General, in his discretion, was authorized, or was authorized at all, to settle with any one or more of the defendants in the suits alleged and set forth in plaintiff's complaint, or either of them, on the payment of what the Attorney-General considered his or their proportion of said deficiency.

Said defendant E. P. Colgan, as such Controller, as aforesaid, denies that on the 30th day of August, 1891, or at any time at all, the suit alleged and set forth in plaintiff's complaint against W. A. Phillips and his bondsmen, was settled and compromised, or settled or compromised, by the payment of the sum of \$7,725 82, or any other sum of money, or at all.

Said defendant E. P. Colgan, as such Controller, as aforesaid, denies that on the 25th day of October, 1892, or at any date or time, the suit alleged and set forth in plaintiff's complaint against W. H. Knight and his bondsmen, was settled and dismissed, or settled or dismissed, upon the payment of \$2,404 36, or upon the payment of any other sum of money, or at all, and alleges the facts to be that said action has never been settled.

Said defendant E. P. Colgan, as such Controller, as aforesaid, denies that the suit alleged and set forth in plaintiff's complaint against William Blanding and his bondsmen, was settled in the latter part of November, 1892, or at any other time, or at all, or was dismissed or disposed of on the 7th day of February, 1893, or at any other time, or at all, or was ever settled, or compromised, or dismissed; and alleges that on the 1st day of August, 1891, some of the defendants in said case, alleged and set forth in plaintiff's complaint against William Blanding, paid to said Wm. H. H. Hart the sum of \$6,601 56, and afterwards, on the 25th of November, 1892, paid the balance of the sum of \$77,175 56 alleged in plaintiff's complaint to have been paid by said defendants.

Said defendant E. P. Colgan, as such Controller, as aforesaid, alleges that the alleged settlements alleged and set forth in plaintiff's complaint herein was unauthorized by such Act of the Legislature of the State of California or any Act or law of said State, and were made by said William H. H. Hart without authority of law, and are void.

Said defendant E. P. Colgan, as such Controller as aforesaid, alleges that he is now and at all times has been of the opinion, and alleges the fact to be that all moneys collected under and by virtue of said Act of the Legislature of the State of California, alleged and set forth in plaintiff's complaint herein, approved March 31, 1891, paid in the settlement of said suits set forth in said Act belongs to the General Fund of the State of California, and should be paid into and become a part of the General Fund of the State of California.

Wherefore, said defendant E. P. Colgan, as Controller as aforesaid, prays that said Court determine whether said sums of money alleged and set forth in said complaint to have been received by said William H. H. Hart were received in full settlement of said suits in said complaint described, and by virtue of said Act, and in accordance with law, or on account of the settlement of said suits, that said Wm. H. H. Hart be, by order and judgment of this Court, directed to pay the said sums, and all sums received by him under and by virtue of said Act of the Legislature, into the General Fund of the State of California, and that said defendant E. P. Colgan be ordered and directed to receive the same, as the Court may determine, for the use and benefit of the State of California, to be paid into the General Fund of the State of California.

J. H. BARHAM,
A. E. BOLTON,

Attorneys for Controller E. P. Colgan.

[Marked Exhibit No. 7.]

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE, etc., ex rel, W. H. H. HART, Attorney-General, *Plaintiff*,

vs.

BOARD OF STATE HARBOR COMMISSIONERS, et al., *Defendants*.

Now comes the defendants C. F. Bassett, C. O. Alexander, and W. H. Brown, as members of, and the State Board of Harbor Commissioners, and for answer to plaintiff's complaint, allege and show to the Court as follows:

Defendants deny that any of the moneys mentioned in the complaint should be paid into the State Treasury to the credit of the General Fund of the State, and they deny that no part of said moneys belong to or should be paid to the credit of the San Francisco Harbor Improvement Fund. On the contrary, and in this behalf, said defendants allege that all of said moneys so collected belong to and should be paid to the said defendants, and by them placed to the credit of the San Francisco Harbor Improvement Fund.

Wherefore, said defendants pray that the plaintiff be directed to pay all of said moneys to them as members of the State Board of Harbor Commissioners, and that plaintiff be required to pay said moneys to the benefit and use of the San Francisco Harbor Improvement Fund.

and that defendants have such other and further relief as may be proper and the circumstances of the case may require

F. S. STRATTON,

Attorney for the defendants, the Board of State Harbor Commissioners.
[Marked Exhibit No. 8.]

Q. Mr. Colgan, you were asked by Mr. Devlin whether to your knowledge you knew that any money had been paid into the State Treasury in pursuance of your demand, and you said, no? A. Yes.

Q. You were present in Judge Levy's Court when the people on the relation of Hart against yourself and the Board of State Harbor Commissioners was tried, were you not? A. Yes.

Q. You were aware that Mr. Hart there produced a certificate of deposit for the full amount of this money which, by the direction of the Court, was indorsed over and delivered to the Clerk of the Court, were you not? A. Yes, sir.

Q. You were present in Court, were you not, when the findings in that case and decree were settled and signed? A. No; I was not.

Q. Were you not there the next morning with Mr. Barham? A. No, sir.

Q. You are aware, however, and can state as a fact, that Mr. Hart has turned over that money to the Clerk of the Court, and that the decree of the Court ordered it paid by the Clerk to the Board of State Harbor Commissioners, can you not? A. Yes.

Q. You do not now, by saying that you do not know that the moneys are in the State Treasury, mean to intimate that Mr. Hart has now in his possession, or is withholding any portion of that money, do you? A. No, sir. The question was put to me in a different form.

Q. It might bear that imputation? A. No.

Q. I ask you now, if you do not understand that Mr. Hart has fully and finally parted with the custody of that money, and that it has gone into the hands of the Harbor Commission? A. That was my understanding, yes, sir.

MR. DEVLIN: Do you know of any other money collected by General Hart during his term of office? A. Yes; there have been several other amounts. I do not know as I could recall them from memory.

Q. Been paid into the treasury? A. Yes, paid into the treasury—several thousand dollars.

Q. Was any money collected in the Sugar Refinery case? A. Yes.

Q. Was that paid into the treasury? A. Yes.

Q. When? A. Well, I can get the exact dates from the office, but I think in June, 1892.

Q. Do you know when it was collected? A. No; I do not know when it was collected. I know when it was paid into the treasury; that is all.

THE CHAIRMAN: Was it on a demand from you, or voluntarily on his part? A. I think it was on a demand from the Controller or request. I do not remember now just exactly. I cannot tell from memory about these things. Of course we have the record in the office there.

MR. DEVLIN: Was any money paid in the Curran case? A. Yes; I think there was \$149 and something, in settlement in that case.

Q. Paid voluntarily, or on demand? A. I think it was paid voluntarily; I do not remember any demand being made in that case.

GENERAL BARNES: Have you got a letter, Mr. Colgan, under date of February 7th from Mr. Hart? A. Of this last February?

Q. Yes. A. Yes, sir; I think I have.

Q. Have you got it in your pocket? A. I do not think I have got that here; I did not bring that with me.

GENERAL BARNES: Will you please get it.

MR. DEVLIN: While we are waiting for that, I will ask that Mr. Hart be sworn, Mr. Chairman.

GENERAL BARNES: I desire to say to the committee that it is the judgment of the counsel, contrary to Mr. Hart's wish, that his testimony should be reserved until the case now proposed to be made against him is completed. He will testify when a case is made against him, and when it is necessary for him to testify; but in view of the nature of this proceeding, as a preliminary examination, in advance of a proceeding provided for by the Penal Code, and which is highly penal in its nature, we think this committee cannot and ought not, under its own motion, or under the impulse of any suggestion, as part of its case against the accused, to require him to take the stand to be examined by counsel employed for the purpose of roasting him.

THE CHAIRMAN: You take an erroneous view of that, General Barnes. I would like to explain the situation once more. Now, the reason that the committee want General Hart to testify is to give him an opportunity to explain away things as they occur, and give him all the latitude possible.

GENERAL BARNES: I would respectfully inquire if the committee has completed all the proofs it expects to submit in this case?

THE CHAIRMAN: No; we have not.

GENERAL BARNES: With the exception of what it might obtain from Mr. Hart in the way of explanation?

THE CHAIRMAN: Not at all.

GENERAL BARNES: Well, then, I think—I think in any event—he should not be asked to make any statement. We should be confronted here with all the witnesses whose testimony he will be desired to explain.

THE CHAIRMAN: He does not desire to examine any witnesses in his own behalf, does he?

GENERAL BARNES: Not until you are through.

MR. DEVLIN: Do I understand that Mr. Hart refuses to testify now?

GENERAL BARNES: You understand this, that Mr. Hart's counsel deem it inexpedient for him to produce himself as a witness upon this examination until after all the evidence has been produced touching the charges of misconduct in office, and so on, which are contained in this resolution. I do not think it is proper or right that he should be called upon in advance to make statements before other witnesses have testified.

The committee took an adjournment until 2 o'clock P. M.

AFTERNOON SESSION.

E. P. COLGAN.

Recalled.

GENERAL BARNES: Have you that letter, Mr. Colgan? A. Yes, I have, General.

GENERAL BARNES: Mr. Chairman, I wish to read to the committee, and let it go upon the record, the following letter:

Wm. H. H. Hart, Attorney-General; Wm. H. Layson, First Deputy; Oregon Sanders, Second Deputy; Chas. H. Jackson, Third Deputy; Albert Betz, Reporter; M. S. Hedden, Clerk.

ATTORNEY-GENERAL'S OFFICE, STATE OF CALIFORNIA,
SUPREME COURT BUILDING, 305 LARKIN ST.,
SAN FRANCISCO, February 7, 1893.)

Hon. E. P. COLGAN, *State Controller*:

DEAR SIR: Referring to the resolution of the Assembly passed on or about February 2, 1893, by the terms of which the Controller is requested to make demands for certain moneys received by the Attorney-General on the settlements of the suits described in Chapter 187, Statutes of 1891, which were instituted by the State against certain ex-Harbor Commissioners and the sureties on their official bonds, you are respectfully informed that under and in pursuance of said statute and by virtue of the discretion and authority thereby vested in the Attorney-General, the undersigned has this day had entered a judgment of dismissal in the last of said suits settled by me, the payments whereon were not completed until the latter part of November, 1892. Further, that I have this day filed a complaint in the Superior Court of the City and County of San Francisco in a suit against the Board of State Harbor Commissioners and yourself as Controller, the object of which suit is to have the settlements so made by me confirmed and ratified by the Court, in order that I and the sureties on my official bond may be held free and harmless from all liability arising out of the action of the Attorney-General in so exercising his said discretionary power in such settlements; and further, that it be determined by the Court by its decree to whom the said moneys shall be paid, and as to whether the same belong to the General Fund of the State or the San Francisco Harbor Improvement Fund.

There need be no delay in obtaining a decision upon these questions, and until such decision is rendered, and not before, it is obvious that I will not be justified in complying with the demand set out in said resolution. You are already cognizant of the facts and the history of said litigation and settlements, and which are set forth in said complaint, a copy of which has this day been served upon you, and you are also aware that said Assembly resolution fails to state the true situation of the case, and does not set out the facts correctly.

Very respectfully, your obedient servant,

WM. H. H. HART,
Attorney-General.

[Marked Exhibit No. 9.]

Q. Did you receive that letter on the same day that it was written? A. Well, I did not make a note when I received the letter, but I think I received it the same time I received the summons. I think it was a little after the train got in on the evening of the 7th.

M. R. HIGGINS.

Sworn.

MR. DEVLIN: Your name is M. R. Higgins? A. Yes.

Q. What official position, if any, do you occupy? A. Private Secretary to the Governor.

Q. Do you remember the circumstance of several of the State officers signing a paper to be presented to the Attorney-General, asking him to give more attention to the duties of his office? A. I cannot describe it as that kind of a paper.

Q. Well, asking him to appoint another deputy? A. There was a petition signed and presented to him in regard to his First Assistant or Deputy.

Q. Have you that paper with you? A. Yes.

Q. Will you produce it? [Witness does so.]

Q. Is that it in your hand now? A. That is it.

Q. Do you know the signatures of the persons whose names are signed to it? A. Well, I am thoroughly familiar with almost all of them, yes.

Q. Is it signed by the persons whose names are appended to the document? I think so—by all of them except one or two officers. The Governor's name is not. I signed his name to that petition.

Q. Is that Mr. Waite's signature? A. Yes.

Q. Mr. Colgan's? A. I think so.

Q. Mr. McDonald's? A. I think so; yes.

Q. Mr. Reichert's? A. I think not.

Q. Do you know who signed it? A. I do not.

Q. Mr. Anderson's? A. I think so.

Q. Mr. Johnston's? A. I think so.

Q. Mr. Pratt's? A. I think so.

GENERAL BARNES: Mr. Higgins, was this ever delivered to General Hart? A. Delivered? No, sir; always been in my possession.

GENERAL BARNES: You do not propose to offer that in evidence, do you?

MR. DEVLIN: Not yet; no, sir. We have not got to that point yet. When I show what was done with it I will probably offer it. I want to show to the committee what the document is.

GENERAL BARNES: It appears to be a sort of a round robin addressed to the Attorney-General, but which, the Governor's Secretary said, was never delivered to Mr. Hart and never called to his attention.

THE WITNESS: I did not say it was not called to his attention. Never delivered.

GENERAL BARNES: It has never been delivered to Mr. Hart, and I do not think it ought to be made a part of the record in this case.

MR. DEVLIN: I simply want to tell the committee what it is. I do not offer it yet.

Mr. Devlin read as follows:

Hon. W. H. H. HART, Attorney-General of the State of California:

DEAR SIR: The undersigned would respectfully represent that great inconvenience is caused to the various State officers by reason of being compelled to constantly seek the advice of private attorneys on the many questions that daily arise in the transaction of public business.

This is not only inconvenient to the State officers, but is very unjust to our legal friends, who are sufficiently interested in our personal welfare and that of the State to be continuously giving advice gratuitously, as there are no funds with which to pay them for their services.

What we need and respectfully insist upon is a Deputy Attorney-General of fair education, good legal attainments, courteous manners, industrious habits, and plain common sense; one who is familiar with the statutes and the decisions, and who will be in the office during business hours. We think that such a lawyer can be easily found among the hundreds of excellent attorneys in this State, and we know that our request is only reasonable. We are the servants of the public, and expected to promptly and correctly attend to our duties, and we think we have been very patient, as personal suggestions and requests without number have met with no favorable response.

Very respectfully,

H. H. MARKHAM.
E. G. WAITE.
E. P. COLGAN.
J. R. McDONALD.
THEO. REICHERT.
J. W. ANDERSON.
A. J. JOHNSTON.
GEO. E. PRATT.

[Marked Exhibit No. 10.]

Q. Mr. Higgins, what was done with this document? A. It has been in my possession ever since.

Q. Did you ever have any conversation with the Attorney-General upon the subject-matters referred to in this document? A. I did.

Q. Where did that conversation occur? A. In the Governor's office.

Q. What was the conversation? A. I went at length into what you might imagine I would in talking about that, and I told him that I had such a document in my possession.

Q. Did he ask to see it? A. He did not.

Q. Did he comply with the request contained therein? A. No, sir.

Q. What was the reason you did not present the document to him personally? A. After talking with the Attorney-General, I came to the conclusion that he did not think that a change was necessary, or did not intend to make the change, and I thought, out of respect to the gentlemen who had signed it, that it was not necessary to have such a document out if there was nothing to come of it—a mere matter of just withdrawing it for the time—and I said nothing more about it.

Q. Do we understand you to mean by that that the Attorney-General refused to comply with the request? A. No; he did not refuse it either way, but I judged from the argument that he made himself, and what he said, that he would not do it, and, of course, I did not think it was necessary to go any further.

Q. What time did this conversation occur? A. Well, I do not know.

Q. About how long ago, the document is not dated? A. It was last fall; probably October. I cannot say exactly when it was. I do not know the date.

MR. DEVLIN: We will offer the document in evidence now; not that it proves anything in itself, but simply for the purpose of proving that the facts stated therein were communicated to the Attorney-General as stated by the witness.

Cross-Examination.

GENERAL BARNES: Mr. Higgins, what was the conversation you had with General Hart; can you detail it? A. I cannot. It was a general conversation extending over, I should think, half or three quarters of an hour. I could not go into details, no, sir; not throughout. I remember a good many things that he mentioned; a good many things we talked of in a general way.

Q. Do you remember what he said? A. Yes; he gave his reasons for not desiring to make a change.

Q. What was the change you desired? A. The change that is suggested there—different deputies. Mr. Layson was the idea. A different gentleman to take charge of the office.

Q. You wanted the removal of the deputy stationed at Sacramento? A. No, sir; we did not care whether he removed him as deputy; I talked to him rather about a change in the office; I did not even suggest a change in his deputies, except to bring some one else to take the place of Mr. Layson, as the entire officers seemed to be dissatisfied, and I advised him to make a change—change one for the other; to bring one up from San Francisco, and let Mr. Layson go down there; that it might give better satisfaction.

Q. What did he say? A. He said he did not think he wanted to do that. He said Mr. Layson was a good man to write briefs, and he thought he could write briefs better here than he could in San Francisco, on account of the library.

Q. Yes; anything further? A. Well, that was about the sum and substance of it. That was the end of it, at least to my mind. That is at least what I thought he intended to do, so I did not press it at all.

Q. You did not hand the document to the General, did you? A. No, sir.

Q. Did you tell him who had signed it? A. I told him, not in detail. I told him I had a petition in my desk signed by all the State officers—heads of the departments.

Q. Did you tell him that there were some who had not signed it yet? A. Well, I do not know. I do not suppose I did. I suppose it was signed as it is now, and I talked to him about it.

Q. Do you know whether or not he told you that whenever you got that petition signed complete, to hand it in to him? A. I do not remember any such conversation. I think it was then just as it is now, as I have never seen it since. I do not think there has been any change.

Q. Did he tell you in substance that he could not consider such a suggestion as that until it was handed in to him or formally presented to him? A. No, sir; I do not remember any such talk.

Q. Do you mean by that to say that no such observation on his part was made? A. I do not recollect it.

Q. You understood, and he understood that you were finding fault with Mr. Layson, did he? A. Well, I do not know what he understood.

Q. Was Mr. Layson mentioned? A. Oh, yes; his name was mentioned.

Q. Then you did understand that Mr. Layson was the subject? A. I did, yes.

Q. And he said, in reply to that, that he did not feel disposed to make the change, because Mr. Layson was a very good man to write briefs, and he preferred to keep him here where he could do that work better than anywhere else? A. That was his idea. He did not say that he would or would not make the change.

Q. Did he say anything to you about Mr. Layson's peculiar qualifications for writing briefs in that large part of the business of his office, consisting of criminal appeals? A. I cannot say whether he said criminal cases or not. He has, at other times, said that to me. I cannot say whether that was this conversation or not. I have heard him say so.

Q. You have heard him say that Mr. Layson was the best writer of criminal briefs that he knew of, and he could not replace him? A. He spoke in general complimentary terms—very highly—about Mr. Layson.

Q. Did he not say so about that particular branch of the business and that he could not replace him as a writer of briefs in criminal cases? A. I do not know that he said he could not replace him, but he spoke very highly indeed of him as to writing briefs in criminal cases—very highly.

Q. Did he say anything to you about suggesting a man that could do better in criminal cases? A. I told him I did not care anything about briefs in criminal cases. That was not what I was interested in.

Q. Was that the only reason that he gave for stating why he held Mr. Layson in his place? A. That is the only one I recall now.

Q. Do you know what proportion of the business—the Court business—of the Attorney-General's office consists of labor of that sort? A. I do not.

Q. Have you yourself any knowledge of the duties, or functions, or the character of work required of a person in Mr. Layson's position? A. I have not, except in connection with our own office.

Q. In what way have you been brought in connection with him in respect to the business of your office? A. It would not be in criminal cases at all, except it might be in matters of extradition from other States, or questions of that kind, or requisition papers. That would be all the criminal business we would have with the Attorney-General's office.

Q. Have you, yourself, been brought in contact with Mr. Layson to any extent? A. Not to a very great extent; no, sir.

Q. Is your acquaintance with him slight? A. Well, I knew Mr. Layson; I cannot say it was slight. We would see each other every day. I do not know how slight it would be.

Q. Did you know, or had you any reason to know, whether or not Mr. Layson was or was not a gentleman of fair education? A. I know

nothing about his education, except as I would naturally meet him and speak to him. He has a fair appearance.

Q. Did you know anything about his legal attainments? A. Well, I do not know that I can answer that question very well.

Q. You speak of courteous manners. Had he ever been uncivil to you or your department? A. Yes.

Q. When? A. On some occasions he had been very uncivil.

Q. In what way? A. We had sent a paper over there for the Governor, requesting a communication on it. He paid no attention to it, and sent it back with a very curt reply after I had sent the porter for it.

Q. Do you remember any particular paper? A. I do not know what that paper was now. I cannot recall that particular paper.

Q. Can you remember any curt reply that he sent? A. Yes. He sent back word to the Governor's office that the Governor's office could take that work up during vacation and hunt up such stuff as that.

Q. That is what you refer to as a curt reply? A. I thought it was—to the Governor—yes.

Q. Did you know anything about his habits of industry or want of industry? A. No.

Q. Did you know whether or not Mr. Layson was or was not familiar with the statutes of this State and the decisions of the Supreme Court? A. I cannot tell you whether he was or not.

Q. Do you know whether he was or was not in his office during business hours? A. I know he was not frequently.

Q. What absences did you find? A. Why, I cannot say particularly. There have been different times when gentlemen have come into our office from different parts of the State, seeking the Attorney-General's office, and making complaints; said it was locked, and they could not get in. I could not tell how much that amounted to, however.

Q. Do you know to what extent Mr. Layson, being left in the office as the only occupant of it, and having to attend the Supreme Court, or go into the library, was compelled to be absent from the office? He could not have the Supreme Court meet in his office? A. I do not know where he was.

Q. Do you know whether or not his absences during the day were long or short? A. I do not.

Q. Is there any rule that you know of, connected with the departments here, that, where one single man is alone in an office, he cannot go and get his lunch, or cannot go to Court? A. I do not know when they go to lunch, General; I cannot answer that.

Q. Is it a rule for every officer connected with the administration of the Government, to remain in his office during business hours? A. I cannot say, sir.

Q. What are business hours? A. I do not know, sir, what they are for other officers.

Q. There is no statute that requires them to be in the office at any given hour during the day, is there? A. I have never had my attention called to it.

Q. There has been no such rule enforced in the Governor's office, has there, with reference to the Governor or yourself? A. There is a rule in our office amongst employes, yes; that they are to be there at nine o'clock and stay until the business is done for the day.

Q. How often do you get through early in the day? A. Well, we

generally let the boys in our office go at five o'clock. I generally stay until time to get home before —

Q. How many assistants and subordinates are there in your office?
A. There are four of us altogether.

Q. Do you know how many there were in the Attorney-General's office? A. I do not.

Q. Don't you know that Mr. Layson was there entirely alone? A. I do not.

Q. During a good part of the time? A. I do not.

Q. Do you know in how many places the Attorney-General is now required to keep an open office? A. I do not.

Q. Do you know whether the law requires him to keep up one in San Francisco? A. Well, I know he does. I do not know what the law requires. I never looked at it.

Q. Now, so far as you know, what personal suggestions and requests, other than those you have mentioned, have been made to General Hart on this subject? A. Well, I have talked with the General, I think, several times about this matter, at different times in the last two years or last eighteen months; I cannot recall them. The subject comes up frequently between us around about the business of the various offices, and between our own offices.

Q. What have your personal relations with the Attorney-General been? A. Pleasant.

Q. Has there been any complaint that you know of, on the part of the Governor to whom you refer here, in respect to any matters of personal intercourse? A. With the Attorney-General?

Q. Yes. A. I have never heard him speak in any unpleasant way of the Attorney-General.

Q. Do you know anything about the extent of the requirements that have been made upon the Attorney-General and his deputies in office during the past two years? A. I do not.

Q. Do you know how they compare with the demands made upon the Attorneys-General that have preceded him? A. I do not.

Q. Do you know or not know that the amount of work that has been done by his office, since he entered it two years ago, has been already more than twice as much as was done by any one of his predecessors during the whole term? A. I do not know that.

Q. Then, so far as you are personally concerned, you had no knowledge as to the Attorney-General's department, the labors of it, character of the work, or the demands upon it? A. I have not.

Q. Who was the author of this, if I may so speak? A. I was the author.

Q. You composed this? A. I composed the round robin, yes. I do not know that I ought to assume all that honor. I think I did though—at least a great part of it.

Q. Well, if you did not do it all, who was your collaborator? A. I could not say. I do not remember now who should have helped me in that.

THE CHAIRMAN: Do you know, Mr. Higgins, whether the last Legislature, two years ago, allowed additional help to the Attorney-General? A. Yes, sir; they passed a statute to that effect.

Q. How many additional clerks or officers did they allow him? A. I think three deputies. I believe that was it.

Q. Three more than any of his predecessors ever had? A. I do not know how many his predecessors had.

Q. He was allowed three additional clerks? A. I think so.

Q. And a stenographer, also? A. Yes.

Q. Typewriter? A. I believe so, yes.

Q. Those were in addition to what the others had had? A. I suppose they would not have passed the statute if it had not been to create the office.

Q. Was there any talk about it at the time, or did you hear any such talk as this: That if the Legislature allowed him this additional help, all of the work required by the State in the way of attorneys' services would be done by his office? A. I don't think I ever heard the Attorney-General say that. I have heard the expression used that that was the argument.

Q. I have been told that he assured the Judiciary Committee to that effect. That is the reason I was asking you. A. No; I have no knowledge of that.

GENERAL BARNES: I suppose the Chairman knows that the same Act that increased his assistants required him also to open another office. Before that, there had been only one Attorney-General's office—that was in Sacramento, where all the assistants of the office were. The same Act that increased his force required him to open another office, so he was obliged to open two; and as the law only furnished one stenographer or one typewriter, you could not divide them between San Francisco and Sacramento.

MR. DEVLIN: Did you have any conversation, Mr. Higgins, with the Attorney-General about changing his deputies—that is, changing one from San Francisco to Sacramento, and one from Sacramento to San Francisco? A. Yes.

Q. Did you make the request of him? A. I did not make a request. I suggested to him in a conversation that he had better bring Mr. Sanders up here; that he might satisfy the officers better—at least I suggested that he try that.

Q. Did he say that he would comply with the request? A. He said he would bring him up here during the Legislature and keep him here during the session of the Legislature.

GENERAL BARNES: Mr. Sanders has been here a considerable time since the session of the Legislature, has he not? A. I have seen him here frequently, yes.

Q. Did not the Attorney-General also say to you, Mr. Higgins, that, after that conversation with you, he would give personal attention to everything that came from your office? A. He did at some conversation. It might have been at this one; probably was. He did at some time say that to me. Or he said that he did give personal attention to all communications from our office, one or the other. I have forgotten just what he did say about that; something to that effect at least.

MR. DEVLIN: Did he give any reasons why he did not want to bring Mr. Sanders up here? A. Well, you do not want to go any further on that, do you?

MR. SIMPSON: In reference to the business of your office, Mr. Higgins, have you discovered at any time that there was any delay in any of the business of your office by reason of a failure on the part of the Attorney-General to give you his opinion when asked for? A. Well, we

have not permitted any failure. We have been very fortunate in having other attorneys when the Attorney-General was away; we have consulted other attorneys constantly. Judge Van Fleet, when he was here, was very kind to come up almost every day if we wanted him, and since that time we have consulted with Judge Catlin some, and Mr. Devlin, and other attorneys at the bar here.

MR. KAHN: Did you find it necessary, Mr. Higgins, to ask these gentlemen outside of the Attorney-General's office? A. Yes.

Q. Could not get the information you desired from the Attorney-General's office? A. Well, we never desired any particular opinion. What we wanted was a knowledge on certain cases. We did not care which way they went on the matter—which way they decided it—so that they would give us information.

GENERAL BARNES: Now, Mr. Higgins, let me ask you this question: Did you or your office ever apply to the Attorney-General himself for any advice or assistance or suggestions in relation to the business of your office that he did not render promptly and cheerfully himself? A. I never have had complaint to make of General Hart's promptness in answering any question that was asked him about our office.

Q. Have not Mr. Hart's relations at all times been friendly and kindly with yourself and Governor Markham? A. Yes, sir; we do not have any other kind with the officers of the State, if it is possible to be avoided. We won't have it.

MR. SIMPSON: What was the occasion of your going to other attorneys for advice? A. Well, occasionally the Governor had some very serious questions of law, as I understand it, to decide—very frequently. Very difficult matters come up to decide, and he wants the best advice he can get, of course, and he calls for the best attorney in the city that he can find.

Q. Is it by reason of the Attorney-General being absent—away from his office—and not having a deputy in which your office had confidence, to rely upon his advice? A. General Hart was away a great deal, as I understand him, on account of the duties of his office, and the Governor desired to consult with some one, and of course he would get whoever he desired.

GENERAL BARNES: Then, do I understand you that the occasions when you received the assistance from Judge Van Fleet or other visitors to the Governor's office—professional gentlemen—were when General Hart was away; that such advice and suggestions were made when General Hart was not here? A. No, sir; frequently when he was here.

Q. Why, then, when he was here, did you apply to others than him? A. We had got in the habit of consulting with those men. They understood our ways of putting questions, and we understood theirs. We had confidence in them; they were very kind all the time, and we kept up the relationship in that way.

Q. Who is Judge Van Fleet? A. He was Judge of the Superior Court here.

Q. Was he, at the time he was advising your office, a Judge of the Superior Court? A. He was. He did it also after he went off the bench.

Q. And not a practicing attorney? A. He was not. It was simply friendly advice.

Q. Let me ask you, is not Governor Markham himself a lawyer by profession? A. Yes.

Q. And of considerable reputed ability, is he not? A. He never practiced law in this State; does not claim to be, and is not familiar with the statutes and decisions as a lawyer would be who practiced in this State.

Q. In the general principles of the law he is well grounded, is he not? A. I think so, yes.

Q. Then the questions that bothered or staggered him, or made him require the suggestions of others, were questions of more or less difficulty and embarrassment? A. Yes. He was very frequently in a good deal of difficulty and embarrassment.

Q. Were the opinions of these gentlemen sought by written request, or, as Judge Van Fleet would drop in, would he just have a conversation with him about matters as they went along? A. We never had any written opinions from Judge Van Fleet, I do not think. I do not recall any now.

Q. How many written opinions has General Hart furnished your department since he has been in office? A. I could not say.

Q. Can you give the committee an idea, approximately? A. Why, two or three or four, I do not recall.

Q. No more than that? A. I do not recall and do not remember now very many. I cannot say. That would be guess work. It would not be of any value as a guess. His books will show. I think he keeps copies of them. Of course the General has very kindly volunteered, when he was away two or three times, and written to the Governor opinions on matters and on difficult questions which he knew the Governor was considering. I could not say that the Governor had requested them of him. I do not know. I know I received opinions there.

Q. Well, has he not, so far as you know, cheerfully and fully complied with every request made of him personally, by your department, since he has been in office with you? A. He has never refused to do so, where it has been requested, as I said before.

Q. Has he not done it cheerfully and promptly? A. Yes, sir.

J. W. ANDERSON.

Sworn.

MR. DEVLIN: Your name is J. W. Anderson? A. Yes.

Q. What official position, if any, do you occupy? A. The position of Superintendent of Public Instruction.

Q. And have occupied that position how long? A. Since the first Monday of January, 1891.

Q. Have your official duties brought you in contact with the Attorney-General and his office? A. Yes, frequently so.

Q. Examine this paper now shown you and state whether or not that is your own signature appended to it? A. Yes, that is my signature.

Q. Will you state to the committee what your experience with the Attorney-General's office has been during the time that you have occupied the position of Superintendent of Public Instruction? A. Well, it has been an experience that has frequently given me very great cause for complaint. I have had more physical exercise than I think I was called upon to undertake or endure in going up and down so many flights of stairs to find the door locked.

Q. You have found the door locked frequently, have you, when you sought his office? A. I have; in a great majority of cases I found the door locked.

Q. When you had succeeded in getting your requests, or information, or advice conveyed to the Attorney-General, or his deputy, what has been the result?

GENERAL BARNES: Will you kindly divide that question, Mr. Devlin? You say the Attorney-General or his deputy. If you will modify the question in that way, it will be gratifying to us.

MR. DEVLIN: I will ask you, how many times have you personally seen the Attorney-General, Mr. Hart, when you have sought for information or advice? A. Well, I cannot tell you how many times.

Q. Has it been frequently, or not? A. Very seldom; not, perhaps, over a dozen of times during the time of my incumbency.

Q. To what person have you most always communicated when you have sought for advice and information concerning your official duties? A. Usually with Deputy Layson; sometimes with Deputy Sanders.

Q. Now, when you have communicated with Deputy Layson, what has been your experience? A. My experience has been, that I usually made the decision and he agreed with me. Usually he would ask the question, when I went in there for a decision, and stated the purport of my visit, "Well, what do you think about it?" and upon my answering that question, the usual response was: "Well, I think that is about right."

Q. Was an opinion prepared embodying the views so expressed? A. Well, probably in fifteen or twenty cases I have had an opinion in writing. Generally the opinion was given orally.

Q. Have you received any opinion concerning your right to a salary as Secretary—I think it is, is it not? A. Yes.

Q. Recently? A. Yes.

Q. With whom, in the first instance, did you communicate for the purpose of ascertaining what the law on that subject was? A. I communicated with Mr. Layson.

Q. How long ago? A. Some eight or nine months ago; somewhere along about last June or July, I do not remember distinctly.

Q. Did you receive an opinion from him? A. Yes.

Q. Was it written or oral? A. Oral.

Q. What was the nature of it? A. He thought I was entitled to the salary that the Joint Board of Normal Trustees had awarded to me.

Q. Have you received an opinion from the office since that time? A. I have.

Q. When was that? A. This morning.

Q. Was it in writing? A. Yes.

Q. Have you got it with you? A. I believe so. [Produced it.]

Mr. Devlin read as follows:

William H. H. Hart, Attorney-General; William H. Layson, First Deputy; Oregon Sanders, Second Deputy; Charles H. Jackson, Third Deputy; Albert Betz, Reporter; M. S. Hedden, Clerk; James L. Evans, Porter.

ATTORNEY-GENERAL'S OFFICE, STATE OF CALIFORNIA,
SACRAMENTO, February 18, 1893. }

A. G. Opinion 415.

Hon. J. W. ANDERSON, State Superintendent of Public Instruction:

After consideration of your inquiry concerning your right to receive and retain money as compensation for your services as Secretary of the Board of Trustees of Normal Schools, I have to state that it is my opinion that you have no legal claim for compensation for such services. Your compensation is fixed at \$3000 per annum and that is in full of all services to be rendered by you. In your capacity as such Secretary you are performing State service. The compensation of an Assemblyman is fixed at \$8 per day. It cannot be contended that he can draw extra pay for service as a member of a committee of the Legislature; nor if he were appointed Sergeant-at-Arms, could he draw pay for that. I have considered Section 19, Article V, Constitution, Sections 354, 1489 and other sections of the Political Code.

I understand the Controller has made demand upon you for the return of money collected for such purpose by you.

The return of the money is a matter for you to determine.

Very respectfully,

W. H. LAYSON,
First Deputy Attorney-General.

[Marked Exhibit No. 11.]

Q. I will ask you, Mr. Anderson, if, between the time that you received the first opinion from Mr. Layson and the receipt of this document which I have just read, you had any conversation with Mr. Layson or any person connected with the Attorney-General's office about your testimony in this investigation? A. Yes.

Q. With whom did you have such conversation? A. I had a conversation with Deputy Layson a few mornings ago.

Q. When was it?

GENERAL BARNES: Mr. Chairman, we think this is wholly irrelevant to this inquiry. Mr. Layson is not on trial. It does not appear that either this opinion, or anything connected with it, was by the direction of the Attorney-General himself. And the conversation that he had with Mr. Layson certainly is not pertinent, in any way, it seems to me, to the matter you have under investigation.

THE CHAIRMAN: Mr. Layson, being the First Deputy Attorney-General, is a part of the office; a part of the matter which it is our duty to inquire into; and it strikes me that this question is one leading up to whether there was a probability of his having been influenced in this more recent decision reversing himself because of the possibility of adverse testimony coming from another department of the State.

[Q. Read by the reporter]. A. I do not remember what morning. It was some time last week.

Q. Well, it was before the rendition of this opinion, was it? A. Yes.

Q. Did you ask again for the rendition of this opinion? A. No, sir.

Q. It was handed to you voluntarily? A. No, sir; it was stuck under my door this morning. I found it there when I came up.

Q. Did you make any request for an opinion upon the subject-matter of this inquiry of yours after you received that oral opinion from Mr.

Layson some six or eight months ago? A. No, sir. I have had conversation with him about the same matter subsequent to the first opinion rendered.

Q. Well, did he affirm or reverse his former opinion in that subsequent conversation before this letter? A. Affirmed his previous decision. That was only a few weeks ago.

Cross-Examination.

GENERAL BARNES: On how many occasions have you applied to the Attorney-General personally for advice or direction in the discharge of the duties of your office? A. I could not tell you how many. Quite a number of times. When I have had occasion to meet him, that is, when I have been able to find him at his office.

Q. Can you state to the committee how many written opinions the Attorney-General himself has given you? A. No, sir. I have them all on file in my book of opinions. I could not say to you how many.

Q. Can you state approximately how many? A. Probably as many as fifteen.

Q. Those fifteen opinions have been in response to written inquiries, letters, addressed to him? A. Generally so.

Q. You are pretty familiar yourself with the school laws of this State, are you not? A. I am reputed to be.

Q. In your conversations with Mr. Layson, I understand you to say you would state your proposition and present your views, and he generally agreed with you. Is that what you said? A. Generally, upon his request, given in about this language, as near as I remember: "Well, what do you think about it?" and I usually answered that question.

Q. When you went down there to discuss a subject with him, with which you are particularly familiar, would you consider it out of the way for a man of his youth to say to a man of your age and experience: "Well, what do you think about it yourself?" A. No, sir; I do not know as I would.

Q. You do not consider that that is a question of complaint? A. No, sir; not at all.

Q. That he sought to get your views about it? A. Not at all.

Q. You do not consider it any evidence of incapacity or incivility that he agreed with you, do you? A. Yes, sir.

Q. Were there any occasions when you talked with him that he did not agree with you? A. I don't know of any. I do not remember any now.

Q. Can you put your finger upon any time that you went to the Attorney-General's office and made the pilgrimages of which you speak and were unable to find the object of your search there present? A. Well, sir, I could not tell you, I have gone there so many times; but I have very often said, not only in my own office but elsewhere, that I would quit going to the Attorney-General's office. The Attorney-General himself being absent, I was unable to find him, and more than two thirds of the time when I have gone to that office I have found the door locked. I went once to it and found a placard on the door to this effect: "This office to let. Fixtures for sale." And I thought that was a very wise provision. I have no complaint so far as the Attorney-General himself was concerned, when I could find him. He has always responded to any queries that I have propounded to him in proper man-

ner; but the difficulty has been to find him. And I believe that is the general complaint about the State Capitol on the part of officers.

Q. I suppose you know that the law requires him to keep two offices, do you not? A. I do.

Q. Do you know how much of the time the Supreme Court of California, before which his attendance is constantly required, sits in San Francisco? A. I have an idea that it requires a great deal of his time.

Q. So far as General Hart personally is concerned, have you any fault to find with the manner in which he has discharged his duties towards you, or the manner in which he has treated you personally? A. I do not know that I have—except on one occasion.

Q. Can you not say more than that? Can you not say that you have not? A. No, sir.

Q. Why do you say that you do not know that you have? Don't you know that you have not? A. I simply wish to give you a qualified answer.

Q. Don't you know that you have not? A. No, sir. I do not know anything of the kind.

Q. Then what do you know about it? A. I know this: That I have had occasion to complain in one instance in particular.

Q. What was that? A. I have had a great deal of trouble, as the Attorney-General knows, and as others know, in reference to the matter of the constitutionality of the law about Union High Schools over this State—a very perplexing matter which I was unable rightly to handle myself, and probably nearly one half of the decisions that had to be rendered in my office have been incident to that matter. And the Attorney-General requested me on one occasion to prepare a draft of whatever changes I thought would be needed in connection with the duties of my office so far as the law was concerned. I did that after calling a convention of the Superintendents of the State. I gave him notice and asked him to appoint a time at which he would meet me and go over the law with me. He set aside one afternoon at which I was to meet him. I met him, and instead of giving me any assistance, or giving me any counsel that would enable me to serve the interests of the people in this regard, he took me into the room adjoining his office at the back and sat down at one side of the table and I at the other. I began to read the most important parts of the bill to him, whilst he seemed to be directing his attention to other matters, and I think I got probably about fifteen minutes of his time on those very important measures, and I went away considerably disgusted, and ferreted out the matter for myself as well as I could, and I complained of it very bitterly. I thought the magnitude of the interests, which I represented in my position, demanded a little more consideration from the Attorney-General and from his office than it received.

Q. Any other instance? A. No, sir; I do not remember of any other.

Q. Then, during the course of your experience with him, there has been one occasion on which you concluded he had not given you sufficient attention— A. No; there are other occasions.

Q. Let me get through, please. There was one particular occasion on which you thought he did not give you as much attention as you thought your case deserved? A. Yes, sir.

Q. Is that all? A. No, sir.

Q. Anything more? A. There have been many other occasions when I have gone to his desk when he was so busy that I was unable to get

any attention given to my request, any more than just simply the oral statement of some proposition at the time, and I was not able to get that degree of attention from him that I thought I needed.

Q. What was the trouble; because he was busy with other matters?

A. He was generally busy when he was here, so busy that he did not seem to have time to attend to minor matters—like school matters.

Q. Was this occasion when you were offended, when he did not do what you thought he should have done, when you desired him to help you re-codify the school laws of the State? A. Yes.

Q. Did you ever ask him to do that? A. Yes.

Q. Did you understand it to be the duty of the Attorney-General of this State to codify the laws of any department of it? A. I did not.

Q. Well, then, what did you want him to do? A. I wanted him to assist me by his advice and counsel so that I might do it rightly.

Q. What advice did you want of him, Mr. Anderson? A. Well, sir, I could not tell you without giving you pretty near the entire school law to read, and particularly the bills appertaining to the constitutionality of Union and County High Schools.

Q. How many sections of the law were required to be revised and examined in order to advise you on that subject? A. I presume there are thirty or forty.

Q. Not more? A. In addition to the High School bill.

Q. How many of those? A. The High School bill, I presume, occupies ten or twelve pages of the law.

Q. How many assistants or clerks have you in your office here, Mr. Anderson?

MR. DEVLIN: I object, on the ground that we are not investigating the office of Superintendent of Public Instruction.

THE CHAIRMAN: I do not see any objection to his answering that question. A. I have a deputy, one chief clerk, and then a clerk who attends to the matter of the State text-books.

GENERAL BARNES: Then you have in your office a sufficient number of attendants so that it never need be left, during usual business hours, without somebody being present there? A. It never is.

Q. If you were the only person in the office, and had business to do on the outside connected with your office, you would feel yourself at liberty to go out, would you not? A. Not without leaving some one there.

Q. Suppose nobody was furnished you; suppose you had nobody? A. Then, of course, it would be an impossibility to place anybody there.

Q. Could you give us any idea of the number of times that you have gone to the office and found nobody there? A. No, sir; I cannot say any more than to say I presume in a majority of cases, and a big majority of the cases.

Q. How often did you go there? A. I have had occasion to go there probably as many as eight or ten times a month.

Q. And in the majority of the cases you found the office closed? A. Yes; I found it closed as much as for two weeks at a time and nobody there but the gentleman who attends to the rooms.

Q. Now, can you tell the committee when it was that the office was closed for two weeks at a time, or that you found it closed when you went there? A. I think it was on one occasion when Deputy Layson was up in the northern part of the State or in Oregon. I am not certain which now. I heard the report at the time that he was up attending to

some case in the northern part of the State somewhere, or in Oregon; I am not certain which. I know I heard it talked of at the time.

Q. Do you know whether it is the custom among officers here in the State building, at any time during the year, to take a vacation? A. It is; yes, sir.

Q. They all do, do they not? A. Yes. This time to which I allude was not a time of vacation at all.

Q. Was not? A. No, sir.

Q. Do you know that this time when you did not find him there for two weeks was the only time that he took a vacation in two years? A. No, sir; I do not.

Q. You spoke about this opinion which he has just given you, adverse to your right to receive a salary as Secretary of— A. Of the Joint Board of Normal School Trustees.

Q. Did you ever consult Mr. Hart upon the question of the right of persons holding offices to act as Secretaries of County Boards and get paid for it? A. No, sir; I have never had any opportunity. I have frequently tried to.

Q. Have you got Mr. Hart's Opinion No. 71? A. I presume I have.

Q. Don't you know that in that opinion, in response to inquiry of yours, he gave you in substance the same matter that is contained in this letter of Mr. Layson's? A. Not at all. It is an entirely different thing. It was, as I remember it, in reference to County Superintendents receiving salaries. This was a matter outside of my official position altogether, and does not come under the purview and principles stated in that opinion at all.

Q. Is the fault you found with this opinion you have produced here of the Deputy Attorney-General, that it was a wrong opinion? A. No, sir.

Q. You think he was right in his judgment? A. No, sir; I think he is wrong in his judgment; but that has nothing to do with anything. I received that opinion simply this morning. I am ready to pay over the \$40 any time, or contest it in Court. I think the decision is all wrong.

Q. Have you ever been served with any demand to pay over this money? A. Yes.

Q. When? A. About last June or July some time. I have that demand in my pocket now.

Q. You have never paid it over? A. No, sir. And do not think I ought to. Still, if it is law, I am ready to pay it over. If the committee will allow me to explain this matter, I would like to do so.

THE CHAIRMAN: Yes, sir; you can.

GENERAL BARNES: Did not General Hart, on the 27th of May, 1891, give you an opinion No. 71, in which he told you that he was of opinion that a County Superintendent was not entitled to per diem as ex officio Secretary of the Board of Education? A. Yes, sir; he has given me that opinion on several occasions.

Q. Is there any difference in principle between your position and that? A. Yes.

Q. Of County Superintendents? A. A marked difference. And that is what I wish to explain to this committee.

THE CHAIRMAN: Well, explain it, Mr. Anderson. A. Heretofore, until the first year of my incumbency, the Joint Board of Normal Trustees,

under a section of the Code in reference to Normal Boards, have been in the habit of appointing the Principal of the Normal Schools. They are required to meet alternately at the different schools. They appointed the Principal of the Normal School as their Secretary, and the section of the Code allows them to appropriate a salary of \$20. Mr. Allen was Secretary for one year, Mr. More would be Secretary the next year, and then the Principal of the Chico Normal School the next year. They found that inconvenient, the Principals not being required to attend those meetings, and so when the matter came up in the Joint Board at Los Angeles—I think that was in the early part of 1891—the Joint Board elected me as the Secretary, because it would be more convenient for them, and the books would always be present, the minute book, and the records kept as a part and parcel of the records of the State Superintendent's office; and I said nothing about salary, knew nothing about salary, until the demand was allowed by the State Board of Examiners, and when I went for my usual demand at the treasury that amount was paid over to me. And subsequently, when the State Board, or Joint Board, met at Chico, that Board passed—it is customary for the Board of Normal Schools at which the meeting is held to pay this salary from the funds that are appropriated by the State to them. The Chico Board sent an order down for the salary, and it was allowed by the State Board of Examiners and paid. And subsequent to the payment of it, I received a communication from Controller Colgan, stating that the sum of \$20 had been unlawfully paid to me, and requesting me to refund the money to the State Controller and to the State Treasury. And I replied, either that day or within a day or so afterwards, I do not remember whether it was that day or not—and I stated to Controller Colgan that if the Attorney-General would give his opinion to the effect that this matter was a matter belonging to my office, if acting as Secretary of the Joint Board of Normal Trustees was a part of my duties, I was ready to pay over the money that I had received from the Los Angeles Board, and from the Chico Board, at any time, and I would submit the matter to the Attorney-General. I submitted it, in the absence of the Attorney-General, to his deputy, and I received the oral statement to the effect that the duty of Secretary of that State Board had no relevancy whatever to the duties of the State Superintendent; and, in consequence, I kept the money where it belonged—in my pocket.

MR. SIMPSON: Who was it made this demand on you, Mr. Anderson?
A. The Controller.

Q. The Controller made the demand? A. Yes.

Q. Did you not state awhile ago that you received word from the Attorney-General—something on that point? A. No, sir; I never received a syllable from the Attorney-General on this point. I received a communication this morning from his deputy in type writing, and on two different occasions I received the same contrary opinion from him orally.

GENERAL BARNES: What is the date of that communication from the Controller, Mr. Devlin?

MR. DEVLIN: June 7th.

GENERAL BARNES: Last year?

MR. DEVLIN: Yes; June 7, 1892.

THE WITNESS: The Joint Board meets only once a year, and this was

subsequent to the meeting of 1892 that I received this communication from Controller Colgan.

E. P. COLGAN.

Recalled.

MR. DEVLIN: Mr. Colgan, as Controller of this State, have you had any dealings and communications with the Attorney-General's office?
A. Yes; I have, quite a number of them.

Q. You signed that paper that you heard read here, did you not? A. I believe I did, yes.

Q. Will you state to the committee what your experience with the Attorney-General has been, and his office? A. Well, my experience with the Attorney-General has been tolerably satisfactory, I think.

Q. Have any suits been brought against you by different people—as Controller? A. Yes.

Q. Involving the question of appropriations and constitutionality of laws? A. Yes.

Q. How many such suits have been brought? A. Oh, I cannot tell the exact number: I guess I have had seven, or eight, or nine cases; something like that. I cannot tell the exact number.

Q. Have you been represented by counsel in all those cases? A. Yes.

Q. Who has represented you? A. Well, the Attorney-General has represented me in several cases, and in several I have had outside counsel. I have had outside counsel in four or five cases, I believe.

Q. Why have you not had the Attorney-General represent you in all? A. Well, one reason is, that when the Legislature of last session passed some appropriation bills, the Attorney-General and I did not agree; and I took outside counsel, and the outside counsel and I did agree, and we contested the cases. I always made it a rule that if the Attorney-General advised me not to pay a claim, I would stay with him; but when he advised me to pay, then I went and took outside counsel; thought it was perfectly safe as long as we had the money—

Q. What has been your experience in getting opinions from the office on questions which you have sought to be advised upon in regard to your official duties?

GENERAL BARNES: You mean so far as General Hart is concerned?
A. Well, I always address my communications to the Attorney-General from my office, and we have had lots and lots of opinions from him. I have not the least idea how many, but a great many, and a great many letters. At times we do not think it is necessary to require an opinion, but just to have his advice in the matter. And we receive communications—oh, hardly a week passes, I suppose, but what we hear something from him.

Q. At the time you signed that document presented to the committee, you believed the statements therein to be true, did you? A. Well, I do not remember all that was in that document when I signed it. I felt that I was justified in signing it, though.

Q. Do you remember about a question arising concerning the constitutionality of a law authorizing the Attorney-General to compromise suits against the Harbor Commissioners? A. I do, sir.

Q. Do you remember the Attorney-General asking that you be furnished with an opinion from some other source upon that question? A. That the Attorney-General asked that?

Q. Yes. A. No; I do not think that was the exact question—not as the claims presented to our office show. I think there were several of the Acts, and at the same time that the Attorney-General took outside counsel, I think I did, too; and on several of those appropriations that were made at that time. It was not particularly—

Q. Embraced three of those Acts passed? A. Yes; I think it covered all of them. I think it was set forth in his claim that it covered the three Acts. I do not know as it touched on that about the Harbor Commissioners or not; I cannot tell. I know I did not take any advice on that, because it was taken out of our hands, and I did not think we had anything further to do with it particularly.

Q. Well, have you ever been personally to the Attorney-General's office to communicate with him upon duties connected with your official position? A. Well, I generally kept track of the Attorney-General, or tried to, and I generally know when he is here before I run into his office. We have had quite a lot of business together, and I generally know that he is either in San Francisco attending Court, or in Los Angeles—that is, supposed to be there for that purpose—and I generally know when he comes up of an evening, and he drops in of an evening lots of times, after the train comes in, to meet me.

Q. Have you ever gone to his office when you found nobody there? A. Yes, I have—a time or two. I do not know how many times.

THE CHAIRMAN: Did the Attorney-General give you an opinion as to the constitutionality of the appropriation made by the last Legislature of \$300,000 to the World's Fair? A. Not in writing.

Q. Did he orally, then? What was the opinion, if he gave any at all? A. He gave me some advice in the matter. I do not know whether you would call it an opinion or an advice in legal phrase.

Q. What was his advice? A. In the first place I did not ask his opinion in law, for the reason that another matter came up in which the Attorney-General and I disagreed, and I went in with my attorney to speak to him about that, and the other party that was interested in the other suit was present at the time, and while talking about that the World's Fair question arose. The Attorney-General stated that if he was Controller of this State he would not draw a dollar of that money until a decision was reached by the Courts; that he would contest it. And for that reason—of course I had taken advice from my attorneys before on the matter, anyhow—and for that reason I did not think it was my duty to ask him his opinion on the matter, because I had had some little talk with other members of his office previous to that.

Q. Did he advise you to procure outside counsel to conduct that case? A. Well, the counsel was present. He was talking to my attorney and me both. He said if he was in my place he would not pay a dollar on account of the size of the appropriation or something—I do not recall the exact wording—without having the decision of the Court. But I was of the impression that he was inclined to feel or believe that the Act was constitutional.

Q. The reason of this inquiry is that the Committee on Ways and Means, as I understand it, had recommended the payment of attorneys' fees amounting to \$2,500. I believe their names are Barham, Bolton, and Davis? A. Barham, Bolton and Davis, yes.

Q. I wanted to get at that. That is a very large sum of money? A. Well, those claims were presented—

Q. I would like to know why that debt was incurred. A. Well, I do not see how I would be expected, if I wanted to contest a case of that kind, to take an opinion from an attorney or to have him fight the case if he thought the Act was constitutional. It would be putting him in a very bad light to fight a case he was in favor of.

Q. He was under the impression that it was constitutional and you doubted it? A. I doubted it, yes; and another member of his office doubted it, too; that is, he put it to me in that light, so that I did not think I would be treating him exactly right if I asked him his opinion on the matter.

Cross-Examination.

GENERAL BARNES: Mr. Colgan, has there been any matter in which you have taken advice of outside counsel where there was a refusal on the part of the Attorney-General to render you his assistance? A. No, sir; there is not.

Q. Have all these cases in which you have sought the aid of outside counsel arisen from the circumstance that the Attorney-General's views did not agree with your own? A. Yes, sir; I think in all cases.

Q. Was there a suit about the Indian War bonds? A. Yes, sir.

Q. Who had charge of that? A. The Attorney-General.

Q. Anybody else? A. And I suppose that I had a right to be represented in that case.

Q. I am not saying you did not have a right? A. Yes, sir; there was some one else.

Q. Well, in that case, was there a diversity of opinion between you and the Attorney-General, which led you to employ additional counsel? A. No, sir; that counsel was employed by request. The Attorney-General and I had several conferences in regard to that, because it involved a large amount of money.

Q. How much was involved in the Indian Bond question? A. Well, in the original suit, as now pending, was about \$12,000, and the new claims as presented; but, in looking the matters up, we contended that there were \$600,000 or \$700,000 in the matter, and we thought it was to the best interest of the State to employ outside counsel.

Q. You had the assistance of the Attorney-General, and then, in view of the magnitude of the amount and of the principle involved in those cases, you thought it was advisable to protect yourself? A. In that case, yes.

Q. In how many cases, where you have thought it best to have outside counsel, has the Attorney-General participated, in one way or another? A. Well, I cannot recall to mind any other case just now. I think we had one suit where we took outside counsel. The Attorney-General did not agree with me at first, but after we got a decision of the lower Court, some points were brought up that we were right, and ought to be sustained, and he came into the case to help us out.

Q. Can you state to the committee, approximately, how many letters the Attorney-General has written to your department in reference to business of the State? A. No, I cannot. There was quite a number.

Q. Can you give us any idea? A. Well, it is just a rough guess, because we have corresponded all the time.

Q. Yes. A. Oh, I do not know—I haven't any idea. I do not know whether it is fifty or a hundred and fifty.

Q. How many opinions, can you state? A. I cannot state that either. We have had a good deal of business together.

Q. Has he not done a great deal of work in the matter of the department of government committed to your charge? A. Yes, sir; he has.

Q. Has he not done it with satisfactory promptness and fidelity? A. Well, I do not know but what he has. Of course there are times that he is away and we have to wait some little time for an opinion, but then I do not know that he could have done it any quicker.

Q. You are aware that the Supreme Court of this State holds terms in Los Angeles, San Francisco, and in Sacramento, are you not? A. Yes, sir.

Q. You are aware that his presence at those Courts is required, are you not? A. Yes, sir.

Q. Do you know how long the Los Angeles term generally lasts, and how many there are a year there? A. They meet there twice a year, and last about two weeks, I think, or ten days.

Q. Do you know how many terms there are at San Francisco? A. Two, I believe.

Q. Do you know how long they last? A. No; I do not know how long they last in San Francisco. I suppose that they are in session pretty much all the time in San Francisco.

Q. How much of the time is the Supreme Court in Sacramento? A. Twice a year.

Q. How long do they sit here? A. About two weeks at a session.

Q. So that the Supreme Court is away from the Capital of the State nearly the entire year, with the exception of from a month to six weeks? A. Yes; they are away pretty much all the time.

Q. During the term of the present Attorney-General, have you information of his being required to be absent from the State upon the business of the State? A. The records show that; yes.

Q. In what business? A. I suppose in attending to State cases in United States Courts. I think he went on once with the Surveyor-General in regard to some land matters for the State.

Q. Do you know what attention, if any, he has paid to, or what trouble he has with, collecting railroad taxes? A. Well, I cannot tell anything about what trouble he has had; I know that he has been engaged in them.

Q. Do you know whether he has conducted any cases of that kind? A. I believe that he has; yes.

Q. Collected taxes? A. I do not know of any that have been collected; no, sir.

Q. Or obtained judgment? A. Well, it is so reported.

Q. For how much? A. I do not know—eight or nine hundred thousand dollars, I believe, in that last decision of Judge Hebbard's.

Q. Do you know, or have you any means of knowledge, as to what amount of work has been imposed upon the Attorney-General's department during Mr. Hart's two years, as compared with previous years? A. No, sir; I never was in the office until this last two years. I do not know from my knowledge, nor from observation, because I was not present before.

Q. Do you know anything about the Orange Tree cases conducted in Los Angeles? A. No; I do not know anything about those cases. I have seen some comments in the paper about them, but I do not know.

Q. Have you no personal knowledge about them? A. I have not.

Q. Nor how the Attorney-General came to go there and take charge of them? A. No; I do not know how he came to go there and take charge of them, as an actual fact.

Q. How many offices is the Attorney-General required to maintain now, if you know? A. Two.

Q. Where? A. San Francisco and Sacramento.

Q. How many persons have been in charge of the Sacramento office, if you know? A. Well, the Attorney-General and his first deputy. When the Attorney-General is here—that is, when he stays any length of time—he has his stenographer with him and the clerk; but as a rule, Mr. Layson is generally here alone and the other deputies stay below.

Q. Then, except when the Attorney-General's presence has been required here, Mr. Layson has been the only person in charge of that office? A. As a rule, yes.

Q. Do you know how many days the Attorney-General has been in charge or has been in the Sacramento office since he has been Attorney-General? A. No, I do not.

Q. Can you form any idea? A. Oh, I haven't any idea—no, sir. I know he has been there a good deal of the time and been away a good deal of time. I haven't any idea in the world how many days he has put in there.

Q. Do you know what his habit has been with reference to hours of labor when he has been here in Sacramento? A. Well, when he is in Sacramento he is generally around his office, and around a good deal of nights, too.

Q. Has he not, when here in Sacramento, worked day and night both, to your knowledge? A. Well, I do not know as regards to his working day and night. I know that I have had to put in a good many nights with him myself, on business that I was interested in, when he was so busy in the day time. I have had to stay around night times myself and put in overtime.

Q. Have you personally had any difficulty with the Attorney-General as to his discharge of the duties of his office, so far as related to you? A. No, sir. I have not had any personal difficulty with him.

Q. Have you had occasion to find fault with him personally? A. Well, I cannot say that I have. I have been a little put out once in awhile when we did not agree on some propositions, but I have tried not to let it run away with us and make any feeling in the matter at all.

Q. It has been on differences of opinion as to what ought or ought not to be done, has it not? A. Yes; a little criticisms once in awhile that I did not think we were just entitled to.

Q. You mean criticisms of his upon you, or criticisms of yours upon him? A. Both.

Q. Both interchanged compliments at times? A. Yes.

Q. But you have not yet been investigated? A. Not yet.

THE CHAIRMAN: In the employment of those Indian War Bond attorneys and the World's Fair attorneys, did the Attorney-General raise any objection to your employing them at any time? A. No, sir.

GENERAL BARNES: Let me ask you, Mr. Colgan, before you took office had you any correspondence with Mr. Hart on the subject of your employing private counsel? A. I think not. Not that I remember of.

Q. Don't you remember addressing him before you took office upon

that subject, and his replying to you that he was able, ready, and willing to attend to all the public matters, or litigations, or questions that might arise in connection with your administration? A. No, sir; I do not remember anything of the kind. Such a thing may have happened, but I have no recollection of it.

Q. In the World's Fair matter, was it ever suggested by you, in any way, that the Attorney-General should take any part or share in that? A. Well, there was a little question arose in regard to the World's Fair case that placed me in a very awkward position. A member of the Attorney-General's office came to me and requested of me that if I intended to contest the World's Fair case, I do not ask their opinion in the matter, and I made up my mind that I would contest it, and I did not ask their opinion in the matter.

Q. And in point of fact you never did? A. I have talked with the Attorney-General about it, yes, but I never wrote to him and asked his opinion. I generally address my communications in writing.

Q. Mr. Colgan, is it not a fact that the Attorney-General told you that he thought that Act was in fact constitutional, but inasmuch as the amount involved was so large he thought it ought not to be paid, or anything done in respect to it, until a Court of competent jurisdiction had passed upon it? A. Words to that effect, yes. That is what I stated a few moments ago. It was something to that effect.

Q. The question was contested, was it not? A. Yes.

Q. What was the Act found to be? A. The Act was found to be constitutional.

Q. Did you ever have any request from your bondsmen to test that question? A. I do not know as I had a request from my bondsmen.

Q. Was it the view of your bondsmen that in respect to a matter so important and a sum so large, you should have a judicial determination concerning it? A. Well, not exactly my bondsmen, but a lot of my friends and other people outside; of course, in the conversation my bondsmen—one or two of them—was talked to in relation to the matter, too.

Q. Did the Attorney-General so advise you to test it and try it? A. He advised me, in the presence of my attorney, yes—that is, stating that if he was in my position, he would do so.

Q. That he would do so? A. Yes.

Q. Mr. Colgan, will you look at this pamphlet shown you, and state if you know what it is? A. Yes; I know what it is.

Q. There is a good deal of work involved in that matter, is there not? A. Yes; and there is a good deal of work in the Controller's office in regard to that matter, too.

GENERAL BARNES: I would like to file this with the reporter. It is a special report of the Attorney-General of the State of California in the railroad tax cases, concerning the railroad taxation.

[The pamphlet was marked Exhibit No. 12.]

GENERAL BARNES: When was it you signed that letter purporting to be addressed, or petition, purporting to be addressed to the Attorney-General? A. Well, I cannot tell the exact date. I think it was four or five months ago; possibly six months ago.

Q. Did you ever say anything to the Attorney-General about it? A. I think not, sir.

Q. You never told him you had signed any such document? A. No, sir.

Q. Did you ever make, yourself personally, any such request of him, as is contained in that letter or petition, if it be a petition? A. No; I think not.

Q. Who asked you to sign it? A. I do not remember now who it was that asked me to sign it.

Q. Who showed it to you? A. Well, I do not remember that.

Q. Where did you first see it? A. Well, the first I saw of it was when it was in the rough—drawn up.

Q. It is pretty rough now? A. Well, it was rougher then.

Q. When did you first see it in the smooth, as it is now? A. I do not remember when I did see it first.

Q. Nor where? A. No, sir.

Q. Nor who showed it to you? A. I cannot swear to that; no, sir.

Q. Nor who asked you to sign it? A. No, sir.

Q. Mr. Colgan, do you know whether there was any understanding between those who signed it that it was or was not, under certain conditions, to be presented to the Attorney-General? A. No, sir.

Q. Was there any other motive or object in this assault upon Mr. Layson—if I may call it so—than what appears upon the face of it? A. Not that I know of. I had my reasons for signing it. Of course, there might be a little more in it than I would have signed if I had taken a serious consideration of the matter, but I felt that I was justified in signing it.

Q. At the time this document was conceived and prepared, was there any feeling of dissatisfaction with Mr. Layson among the State officials here for any other matter than that connected with the discharge of his official duties? A. Well, I cannot speak for any one else.

Q. How about yourself? A. There was none so far as I was concerned, that I remember of.

Q. You do not know of any other reason—any reason that was not stated in the petition itself—why they were dissatisfied with him? A. I do not know of any; no, sir.

MR. DEVLIN: I simply want to ask you one question. Who furnished the figures found in this report—the calculations? A. Well, I do not know who furnished those. I know that we made up a statement twice, I believe, in our office, covering a great many of those figures for the Attorney-General's office and also for Mr. Post, I believe.

THE CHAIRMAN: I want to ask a question or two. With regard to these fees, \$2,500 to the attorneys in the World's Fair matter and the Indian War Bond, were those claims allowed by the Board of Examiners? A. Yes, sir.

Q. Did the Attorney-General sign both? A. I think they are allowed by the full Board, yes. I think there is a record of it in the Board of Examiners' report. The full Board approved the claim. They allowed both. They are both approved.

Q. Here is a whole series of matters, and, among others, I see one Cotton has been allowed for legal services some \$1,230, during a period from February, 1891—during the last two years. Do you know anything about those? A. Those are records from my office. That is all I know anything about.

Q. Do you know what kind of services were rendered, and in what

form, and all about it? Is there any explanation you can give of them? A. Mr. Mathews and Mr. Devlin—it would be difficult to explain those things from memory. I can go and get the vouchers and show just what they are for.

MR. DEVLIN: Have you seen this statement before? A. Yes, sir. That statement has been made up by—or looks like the handwriting of—one of the clerks in my office. In fact, I know it has.

Q. Do you recognize it as being a correct statement of the expenses and amounts paid for attorneys' services during the times mentioned in that statement? A. Yes; I am satisfied it is. I have seen the same statement before.

MR. DEVLIN: Who was the person that advised you, from the Attorney-General's office, about the World's Fair appropriation—not to ask an opinion of it? A. Well, Mr. Layson.

Q. The First Deputy Attorney-General? A. Yes.

GENERAL BARNES: Do I understand that the Chairman will put Mr. Cotton on to explain these matters? Otherwise we want the Controller to produce these vouchers.

THE CHAIRMAN: Certainly we will. You can put him on, General Barnes, at any time that you want to.

MR. DEVLIN: We will withdraw that paper for the moment.

GENERAL BARNES: If that is withdrawn and not introduced, that is all right, then.

J. R. McDONALD.

Sworn.

MR. DEVLIN: Your name is J. R. McDonald? A. J. R. McDonald.

Q. What official position, if any, do you occupy? A. State Treasurer.

Q. How long have you been holding that position? A. A little over two years.

Q. Have you had occasion, as State Treasurer, to consult the Attorney-General and his office in connection with matters relating to your official duties? A. Yes.

Q. State to the committee what your experience has been? A. My experience with the Attorney-General has been very pleasant.

Q. What has it been with the deputies in his office? A. The deputy has not been so satisfactory.

Q. When you say deputy, whom do you mean? A. I mean the First Deputy Attorney-General.

Q. Well, what is his name? A. Layson.

Q. In what respect has it not been so pleasant? A. I never could seem to get anything that I inquired about. He never could seem to give me any opinion, for some reason. I never could get any opinion out of him, for some reason; I do not know what.

Q. Were you present when I read that paper that Mr. Higgins produced? A. Yes, sir.

Q. Did you sign it? A. I suppose it is the same paper. My name is to it, I suppose. It has been some time since I read it; of course I do not distinctly remember what is in it.

Q. That is your signature, is it, Mr. McDonald? A. Yes.

Q. Well, state what your experience has been in finding a person in

attendance in the Attorney-General's office when you have gone there for information connected with your office? A. My office, so far, has not required a great many opinions; but I have to have some advice in some small way, and some very large cases come up. But I have frequently gone to the Attorney-General's office when his office was closed.

Q. Can you state to the committee how long it has remained closed, or how frequently you have gone and found it in that condition? A. I could not tell you, because when I found it closed, I have gone back to the office.

Q. Well, has such experience been frequent or infrequent? A. It has been frequent.

Q. Then what did you do in securing the information that you sought from the Attorney-General? A. I would wait until the Attorney-General came, if I could wait; if I could not, I would refer to somebody else.

Q. Have you had occasion frequently to refer such questions to other people for your guidance? A. Not very often.

Q. Had occasions sometimes, have you not? A. Only once, so far as my knowledge goes.

Q. What has been your experience as to the Attorney-General himself being in the office? A. The Attorney-General has been away a great deal—a great deal—and I do not remember but one case where the Attorney-General failed to give me an opinion when I asked it.

GENERAL BARNES: What was that one case, Mr. McDonald? A. I wanted an opinion on the Refunding Debt, that was defeated; how we could arrange it before the Legislature, or whether it could be done.

Q. Did you address a letter to him upon the subject? A. Yes; I think I addressed him a letter and gave him the points I wanted to hear from him on.

Q. And received no reply? A. I received no reply, sir.

Q. Did you talk with him personally about it? A. Well, now, I do not know whether I talked with him personally about it or not. I could not tell you; I think I did, however.

Q. Did he not discuss it with you, and give you advice about it orally? A. I think not, sir. I do not remember anything about that.

Q. With that single exception, during the two years you have been Treasurer and he has been Attorney-General, has your intercourse with him, with relation to your office and its functions, been without criticism? A. It has, sir; very pleasant, indeed.

MR. DEVLIN: I want to ask you on one other branch of the case. State to the committee, please, the manner in which money is paid into the State Treasury and how it is apportioned, so far as your office is concerned, to the different funds; whether you keep it separate, or whether it is a matter of bookkeeping? A. When money comes to the Treasurer's office I send immediately a notice to the Controller that I have such moneys on hand; and when he returns me a notification to turn it into the treasury, I do so, and give a receipt. But when taxes are paid, the gentlemen paying the taxes usually go to the Controller's office and have statements made up, and they bring the statement with the money, and I receive the money and then give them a receipt.

Q. Have you such a fund in the treasury or on your books known as the Harbor Improvement Fund? A. Yes, sir.

Q. And the money that is paid into the treasury is all kept together, is it not—not segregated at all? A. Yes, sir; kept together.

Q. It is merely a matter of bookkeeping? A. It is segregated on the books, that is all.

Q. If moneys are paid into your office, whether it is to go to the Harbor Improvement Fund or to the General Fund, do you make any difference, so far as the vault of the treasury is concerned, or does it all go together in the vault? A. Yes, all together.

Q. The only difference would be the way you entered it upon the books? A. Yes. You can go to the books and find the different standing of the funds, but the money is all together.

Q. By whose direction do you give these different funds credit for sums of money paid to you? A. By the Controller's.

Q. By the Controller's direction? A. Yes, sir; entirely.

GENERAL BARNES: Have you ever known any money to be paid into the Harbor Improvement Fund, except upon a certificate certifying the money to you by the Controller at the request of the Harbor Commissioners? A. No, sir.

Q. The Harbor Commissioners regulate that thing themselves, do they not? A. They regulate the amount of money they send. I do not know anything about that. I take the money that is sent, and send the Controller's office notice that I have that much money.

Q. Now, if the Harbor Commissioners have \$10,000 that they want to get into that fund in your office, what do they do? A. Send it to me.

Q. Send the money directly to you? A. Then I notify the Controller that I have that much money, and he sends me an order to turn it into the treasury, to that Harbor Improvement Fund, and then I give receipts to them.

Q. Then when you get the money from San Francisco you make no account of it until you get the certificate of the Controller directing you what to do with it—what fund to credit it to? A. The Harbor Commissioners require a receipt for it.

Q. Now, you deal directly with the Harbor Commissioners, do you not? A. Not exactly; no, sir.

Q. When they send you money, do you put it to the credit of the account as they direct? A. Well, if it is correct with the Controller's books, yes; if not, I would not. The Controller is all I go by. I merely send those receipts, merely as they request them, as soon as it arrives. But I cannot turn that into the treasury until the Controller tells me what to do with it.

Q. When you get the money you give them a receipt for it? A. Yes, sir.

Q. And you notify the Controller? A. Yes.

Q. And await his direction in return as to what disposition to make of it? A. Yes.

Q. And it goes to whatever account he directs? A. Whatever he directs. I do not question his accounts; I have no right to.

Q. Then the Controller, so far as that is concerned, is simply the bookkeeper? A. He is the bookkeeper and I am the cashier; that is all.

Q. Suppose money was in the General Fund, could you take money out of that and put it in the Harbor Improvement Fund? A. No, sir. I believe there is a law to that effect, that the Controller—I am not sure about that; I would not swear to that—but there is a way that money can be transferred from one fund to another, but it has slipped my memory at the present time.

Q. As to how it is done you cannot state at this moment? A. I cannot get at it now.

Q. Do you know whether that law, by which the money could be transferred from the General Fund to other funds was not a law passed before the new Constitution? Don't you know that the new Constitution, Section 25, Subdivision 13, forbids any transfer from the General Fund to any other fund by special law? A. I do not know, sir.

MR. DEVLIN: Now, let me ask you one other question. While you state, as a general proposition, that all the money that finds its way into the Harbor Improvement Fund is paid by the Harbor Commissioners, if General Barnes should come to your office with a sack of gold, upon the direction of the Controller to pay it to the River Improvement Fund, you would put it there, would you not? A. Put it anywhere he stated.

Q. If General Hart had come to you in 1891, or any portion of 1892, with a sack containing gold, or any portion of it named in these suits, with a direction from the Controller to pay it to the River Improvement Fund, would there have been anything to prevent you from doing it, or him from putting it into the treasury? A. No, sir.

Q. And your making a correct entry upon the books? A. None at all. I have no right to question the Controller's statement, without I know it is wrong.

GENERAL BARNES: Suppose Mr. Hart had come to you with this sack of gold, and had told you that that belonged to the Harbor Commissioners and should go into the Improvement Fund, and then the Controller were to tell you that it should go into the General Fund, what would you do? A. I would let it stay there until they decided on it.

MR. DEVLIN: It would be perfectly safe with the Treasurer, would it not? A. It might be—it might not.

GENERAL BARNES: Would you make any entry of it in your books? A. No, sir.

Q. Just let it stay there, as you would a sack of coal? A. Just put it in my safe, as if it was a sack of coal.

Q. Then you would hold it there just as you would if I should leave some money there over night? A. Yes.

Q. Just the same way; keep it to accommodate—is that the idea? A. We do not keep money to accommodate men; we have quit that.

Q. What would you do, suppose the Attorney-General had some money in his possession, and he said it ought to go to a certain fund—to the Harbor Fund—and brought it you, and gave it to you for that specific purpose, and you should notify the Controller, and the Controller should certify back to you that Mr. Hart did not know what he was talking about, that that money belonged to the General Fund, what would you do? A. I would put a tag on the bag and put it in the safe—in the vault—and then await the decision of the authorities, whoever they were.

Q. Now, do you know how it was that what is known as the January defalcation, occurred? A. I do, sir.

Q. Did not that occur just in the same way? Money put in there, that was tagged and put in the safe? A. No, sir; that was not the same way.

Q. And he took the money and marched off with it? A. It is not the same way, from the very fact that they were special deposits of school

funds. Now, if General Hart should bring it in to me and say it should go into the Harbor Commission Fund and I should take it, then, when I sent to the Controller and got a notice that it did not, but should go into the General Fund, why, I would have to put it into the General Fund. I could not help it. I did not understand what you were getting at.

Q. Then you would obey the Controller, and not Mr. Hart? A. Of course, I would.

Q. No matter what Mr. Hart told you had got to be done with the money, you would do what Brother Colgan said? A. No matter what he said, if the Controller said that what he said was not so; that it must go into the General Fund, I must put it there.

Q. No matter whether Mr. Hart wanted it to go there or not? A. No, I do not think so. There might be something in that, but I never thought of it in that light. But I do not think so.

Q. If you once got your hands on the money, you would take the direction of the Controller as to what to do with it, no matter what the party said who gave it to you? A. I think that is the proper way to do. That is my idea about it. Now there may be something in the law about that that I do not understand; I would not say positively; but that is what I would do with it so far as I know.

MR. DEVLIN: If this money had been deposited in your hands by General Hart, you would have kept it as State money, would you, and not paid it out except upon a warrant drawn by the Controller? You would not have recognized General Hart's right to get it again, would you? A. He is a State officer and has a right to come there and deposit money there and I have a right to take it.

E. G. WAITE.

Sworn.

MR. DEVLIN: Mr. Waite, you are the Secretary of the State of California? A. Yes.

Q. Have been such for the last two years? A. Yes.

Q. Your name is signed to a paper that I presented here some time ago. You heard it read, didn't you? A. Yes, sir; I heard it read.

Q. I will just have you verify your signature. State to the committee whether or not this is your signature to this document? A. Yes, sir; that is mine.

Q. Have you had occasion, during your incumbency in your present office, to consult with the Attorney-General and his office concerning matters relating to your official duties? A. Yes, sir.

Q. Will you state to the committee what your experience has been? A. Well, my experience has been rather a pleasant experience, taking it all in all.

Q. What has been your experience with the First Deputy Attorney-General, Mr. Layson? A. I have not had any difficulty with Mr. Layson.

Q. Have you ever gone to the office when you found nobody there? A. Yes, sir.

Q. Frequently? A. Yes.

Q. How long have they been absent, so far as you know? A. Well,

I do not know. I have been to the office sometimes eight or ten times a day, and found the door locked.

Q. What has been your experience towards getting opinions upon difficult matters, or upon matters connected with your office? Have you got them speedily, satisfactorily, and explicitly? A. Well, generally I got some sort of an opinion, but not always.

Q. Sometimes you did not get any at all? A. Sometimes I could not get any.

Q. When you did get it, what kind was it? A. Well, when their opinion disagreed with mine, I thought it was not a good one.

Q. Have you had occasion, during the last two years, to consult outside counsel in regard to duties connected with your office? A. Yes, sir.

Q. Have you done so frequently? A. About six times, I think, all together.

Q. What has been the occasion of that, Mr. Waite? A. Well, sometimes it was because the door of the Attorney-General's office was locked. Sometimes it was because I did not take the same view of the law that they did.

Q. You signed this document at the time presented, voluntarily? A. Yes.

Q. Knowing its contents? A. Yes.

Q. Signed it for the purpose of action by the Attorney-General? A. Yes. My understanding was that there was no intention to interfere with the personnel of the Attorney-General's office; simply to make an exchange of one deputy for another.

Q. You thought that essential to the State service, to have that done, I suppose, when you signed the paper? A. Well, I am not in the habit of going to the office very often, and I did not care so much about it myself.

Cross-Examination.

GENERAL BARNES: Mr. Waite, who did you take into your confidence as an adviser? A. I have consulted Mr. Devlin on, I think, three occasions, and Judge Catlin about as many times.

Q. Then altogether, during the two years, you have gone outside of the Attorney-General's office, say half a dozen times? A. About half a dozen times, I should think.

Q. When you consulted with Judge Catlin, was it because Mr. Layson's opinions and yours did not agree? A. No; I do not know that it was in consequence of a disagreement between Mr. Layson and myself. It was principally with regard to the Australian Ballot Act. I took a different view of it from what the Attorney-General did.

Q. The Attorney-General himself, or Mr. Layson? A. The Attorney-General.

Q. And you talked with Judge Catlin about it? A. Yes.

Q. Did the Judge agree with you or with the Attorney-General? A. He agreed with me.

Q. Every time? A. I think so—every time.

Q. Then I understand you to say that you only counseled with others where there was a difference of opinion between the Attorney-General's office and yourself? A. No; I say sometimes when I could not find any one there, and sometimes when there was a disagreement.

Q. Altogether, I understand, they did not exceed a half dozen times in two years or more? A. I think I have not consulted any outside attorneys here, except those times in Sacramento, but while I have been in San Francisco I have consulted with attorneys there—Judge Curry and General Chamberlin, I believe—as I happened to meet them.

Q. There has never been any time, has there, Mr. Waite, when you have applied to the Attorney-General for his advice or opinion that he has not given it—I will not say now whether it agreed with yours or not—he has never refused to render you assistance when you applied to him, has he? A. Except, perhaps, in one instance.

Q. When was that? A. That was nearly two years ago, with regard to the Weights and Measures Bill.

Q. What was that case? A. It was in regard to the constitutionality of the Weights and Measures Bill. I wrote out my opinion in regard to the matter, with the points in the case, and presented it to him, and I did not get any opinion from him.

Q. That is the way you did; you wrote an opinion and asked his concurrence in it? A. No; I wrote out the objections that I had to the bill and presented them to him and asked him to look them over and see whether he agreed with me or not.

Q. Were you against the law? A. Yes.

Q. Did you ever enforce it? A. No; I did not.

Q. Did you not say to the Attorney-General that, no matter what he might think about it, your views were so fixed that you would not enforce it, no matter what he said? A. No; he propounded that question to me whether I would or not.

Q. What did you tell him? A. I told him that I wanted to see his opinion first.

Q. Did you not tell him, in effect, that you would not enforce such a law as that, anyhow; that you were perfectly satisfied in your own mind that the law ought not to be enforced and was unconstitutional? A. I think I did tell him.

Q. And unjust, and you would not do it anyhow? A. If I did not tell it to him, I did to some others.

Q. What is that? A. If I did not say it to him, I did to some others.

Q. That was your opinion? A. That was my opinion, and I had the judgment of others.

Q. If he had written any kind of an opinion, as against your firm and deliberate convictions, it would not have affected your action a bit, would it? A. I do not know. His argument might have overcome my objection.

Q. In all human probability it would not, would it? A. It would have taken a pretty strong opinion, I think, to have changed my judgment.

Q. Now, do you remember whether, after you had expressed convictions so strong to the Attorney-General, he did not say to you that he did not think it was worth while to write an opinion when your mind was so decisively and definitely made up on the subject? A. No; I do not think he did. He said he would give me an opinion.

Q. He did not say he would not? A. I spoke to him two or three times in regard to the matter, and said: "You have not given me any opinion?" "Well," he said, "it wouldn't make any difference what my opinion would be in regard to that matter, you would not execute it."

Q. That is what he said? A. Yes, sir.

Q. Well, he was right, was he not? A. Well, no; I do not say that he was right. I said it would take a pretty strong opinion of his to overcome my opinion of the law.

Q. Do you remember whether in that matter the Attorney-General did not say to you that the position you occupied was so strong, and his doubt about the matter was so great, that he could not write an opinion that he thought would have any effect upon your judgment? A. No.

Q. In other words, do you mean to be understood by the committee that it was a case of willful refusal by Mr. Hart to write upon it, or that it was one of those cases where he did not think it was worth while to do it, because the law itself was so full of objections, and your hostility to it was so settled and pronounced? A. No, I think not. I do not think he had any such conversation as that with me.

Q. Do you mean to say, then, that he willfully refused to do it? A. No; he said he would give me an opinion by and by in regard to that matter. I waited several months, and I did not get it, so I had to go on my own judgment about it, and it was with others that I consulted.

Q. He said he would give it by and by? A. Yes—hadn't had time to get at it yet.

Q. Do you remember whether the Attorney-General did not tell you that on account of the doubtful and peculiar provisions of the law, he did not think it would be advisable to attempt to enforce it? A. No; he said something to me, I think, in the hall here once, that he did not know but what I was right in regard to my attitude.

Q. You do not think that his failure to write an opinion in that matter worked any injury to the public service, do you? A. No; I think not.

Q. What? A. I do not think it did. But he is the legal adviser of the State.

Q. You think the best course that could be taken with that law, was the course you took? A. I think so; yes.

Q. You think so now? A. Yes; I think so now. I have never had any occasion to change my opinion.

Q. Did you take any other counsel about this Weights and Measures Bill? A. Yes, sir.

Q. Than Mr. Hart's? A. Yes, sir.

Q. With whom did you consult, sir? A. I consulted Judge Curry and General Chamberlin, as I met them in San Francisco.

Q. And they agreed with you? A. Yes, sir.

Q. You never found anybody, in point of fact, with whom you consulted about that measure that did not entertain the same hostility, after examination, that you yourself felt? A. Well, I do not know as they had as much hostility, but their opinion was the same.

Q. That is what I mean. A. Oh, yes; I never found any difference of opinion with those I consulted.

Q. Do you remember whether the Attorney-General did not tell you that the Congress of the United States had not yet adopted any such standard, or had any such legislation in relation to weights and measures? A. Yes, sir.

Q. As made it undesirable for this State to undertake to deal upon the subject until proper Congressional action was had about it? A. Yes, sir; he said that the United States Government had not passed any

Act upon that subject and I disagreed with him on that. I thought it had.

Q. You thought it had? A. Certainly it has. Must have passed some Act on the subject or else they would not send the standards here.

Q. Did not that apply only to one system of weights and measures and not to all? A. I think the United States standard covers all the systems of weights and measures.

Q. Mr. Hart thinks he cannot find any such law. I do not know that there is myself. A. I know that the United States has passed an Act appropriating money to furnish standards to all the States of the United States and have sent them to all. There must be some law on the subject or they would not pass an Act of that kind.

MR. DEVLIN: When was that Act about weights and measures passed, Mr. Waite? A. About 1891.

Q. Have you got any opinion from the Attorney-General yet upon that subject? A. No.

Q. You have tried hard enough, have you not? A. Yes.

Q. Have given up trying? A. Yes; he said he thought I was about right about it.

Q. You have been forced to take the responsibility of deciding that important question yourself, have you not? A. Yes.

Q. Without any aid from the Attorney-General? A. Yes.

GEO. E. PRATT.

Sworn.

MR. DEVLIN: Your name is George E. Pratt? A. Yes, sir.

Q. What position do you occupy? A. Secretary of the Board of Examiners.

Q. You have occupied that position how long? A. Since January 8, 1891.

Q. Did you sign this document now shown you? A. I did, sir.

Q. Have you had occasion, by virtue of your official position, to have dealings with the Attorney-General's office for the last two years? A. Yes.

Q. Please state to the committee what your experience has been. A. In what way?

Q. Well, in promptness of service, finding the office occupied, getting information, getting opinions, business being attended to, etc.

GENERAL BARNES: Will you kindly segregate that question, Mr. Devlin—the Attorney-General from the other? A. My experience with the Attorney-General when he has been here has been very pleasant, and when he is absent I never go into his office.

Q. Why not? A. Sometimes I have been unable to get in. When I have been able to get in and the Attorney-General was not there, I have reserved the matters under consideration until the Attorney-General reached Sacramento, or I could correspond with him. Of course, I have been brought in contact with the Attorney-General very largely in the last two years, but more business has been done by correspondence when he is not in Sacramento. Many opinions are asked and he gives them in San Francisco.

Q. But when the Attorney-General is not present in Sacramento you

have no personal communication with any person, attaché of the office, have you? Is that what you mean? A. Yes, sir; none whatever.

Q. Can you state to the committee how much of the time the Attorney-General is in Sacramento; how much of his time he has been here? A. I cannot.

Q. Has it been much, or little? A. Well, it is irregular.

Q. Is he here most of the time or not? A. You mean more days here than away?

Q. Yes. A. In the last two years?

Q. Yes. A. I think more days away than here.

Cross-Examination.

GENERAL BARNES: How many meetings have the State Board of Examiners held during the past two years? A. Up to December 24th—from the 8th of January, 1891, to December 24, 1892—one hundred and seventy-four meetings, by the record.

Q. Was Mr. Hart present at those meetings? A. Not all of them.

Q. How many of them? A. I could not tell.

Q. Was he at as many as two thirds of them? A. Well, I should judge so; I cannot say positively.

Q. How many claims have been passed upon by the Board of Examiners during that time? A. Over eighteen thousand.

Q. It is the Attorney-General himself, and not his deputy or deputies, who is a member of the Board; is not that so? A. Well, that is supposed to be the case; but when the administration first came in power, his first deputy held that he was a member of the Board by virtue of being First Deputy, which was never allowed. He never signed any claims by virtue of that office, so the business of the Board has been conducted by the Attorney-General from his office alone.

Q. By the Attorney-General, personally? A. Personally—when here.

MR. DEVLIN: Do you know anything about the employment of Mr. Cotton to give an opinion to the Board of Examiners upon the constitutionality of certain Acts passed by the last Legislature? A. He never did to the Board of Examiners.

Q. Well, did it come up before the Board of Examiners? A. Yes.

Q. Will you state to the committee what you know about it? A. I do not recollect the amount of the claim, unless it was a hundred-dollar claim. There was a hundred-dollar claim. I could recall, I think, what that was for.

Q. Was there any antecedent agreement with the Board of Examiners, is what I am getting at, about this claim? A. None whatever. The bill was presented to the Board of Examiners—I think it was one hundred dollars—for passing on four Acts.

GENERAL BARNES: One hundred dollars for writing an opinion on the constitutionality of four Acts? A. Oh, the bill came in for passing on the constitutionality of four Acts, known as the Tia Juana case, the Stephenson case, and the Bourn claim, and the Lynch claims.

MR. DEVLIN: Why is it, Mr. Pratt, that you did not have communication with Mr. Layson? What are your reasons? A. Well, for some time after I took possession of the office I used to go there to find the Attorney-General, and would find the office closed many times, with a card on it, and after that I did not try the office at all, and would gen-

erally get word from the Attorney-General by wire when he would be up. I do not think an opinion ever was asked from the First Deputy.

Q. Well, when you knew the First Deputy was in his office and the office was not closed, what reason have you why you did not seek his opinion upon questions as they would come up in the administration of your duties? A. I do not know that I had any reason, but I did not consider that his opinion was of any account. Still I have no reason; that is simply a personal opinion of mine.

Q. Upon what do you form that conclusion? What leads you to form that conclusion? A. Well, in the first place because an opinion of the Attorney-General can be received after a short delay. And I do not know why I should—I never had an opinion from him, so I could not tell you. That is a personal opinion of my own.

GENERAL BARNES: So that when you wanted to get anything from him when he was here you sought him in his office and if he was below you wrote to him? A. Yes, sir. And many times received opinions from the Second Deputy, Mr. Sanders, and in case those were of no account apparently, they were re-referred to the Attorney-General and sometimes an amended opinion was given.

MR. DEVLIN: How many cases occurred that way? A. Well, I do not know. There was one case, I think. We do not get very many opinions, because the Attorney-General being here and these claims coming up before him for action, he generally gives his opinion at the time.

Q. Do you want the committee to understand that you did not feel justified in performing any official act upon the opinion of the First Deputy Attorney-General? A. Well, I am not a member of the Board of Examiners.

Q. In seeking for information as to what the law is upon a given subject, do you want the committee to understand that you could not safely act upon the opinion of the Deputy Attorney-General? A. I would very much prefer to have the opinion of the Attorney-General.

Q. Why would you prefer the opinion of the Attorney-General to that of the First Deputy? A. Well, on some questions the opinion of the Attorney-General has been given which has been at variance with his deputy's, and I thought it was best to get them from him first handed.

Q. What opinion is that of the Attorney-General's which is at variance with that of his First Deputy? A. I say the First Deputy never gave me an opinion.

Q. And so far as you have been concerned, the position of the First Deputy Attorney-General has been of very little practical service to you as an officer? A. It has been utterly useless to our office.

A. J. JOHNSTON.

Sworn.

MR. DEVLIN: Mr. Johnston, you hold the position, I believe, of Superintendent of State Printing? A. Yes, sir.

Q. You have held it for how long? A. Since January, 1891.

Q. Have you seen this document that I read some time ago. A. Yes, sir.

Q. Is that your signature? A. Yes.

Q. Have you had occasion, during your incumbency in the office you now hold, to have communications with the Attorney-General and his office? A. Yes.

Q. Will you please state to the committee what your experience in that respect has been? A. Well, my business with the office is largely printing business; receiving orders and delivering orders.

Q. Have you ever had occasion to consult the Attorney-General, or any of his deputies, with relation to your official duties? A. Yes, sir.

Q. Whom have you consulted? A. Well, I consulted Mr. Layson at one time, and then, afterwards, Mr. Hart.

Q. Upon the same subject? A. Yes, sir.

Q. Well, what was your experience upon that subject? A. My experience was that while they both gave me the same opinion, Mr. Layson gave me the opinion first and it was not accepted.

Q. Accepted by whom? A. By the Controller. But afterwards General Hart gave me an opinion on the same matter, and it was accepted by the Controller.

Q. Was General Hart's opinion and Mr. Layson's opinion to the same effect? A. Yes, sir.

Q. And the Controller would not accept Mr. Layson's opinion? A. No.

Q. But accepted the opinion of Mr. Hart? A. Yes.

Q. Have you ever, on any other occasion, asked anybody connected with the Attorney-General's office for information or advice upon any matter connected with your official duties? A. No, not that I know of; not that I can remember.

Q. Now, your office is very near the Attorney-General's office, is it not? A. Yes.

Q. You are around near his office most of the time? A. Yes.

Q. Will you state to the committee how the Attorney-General's office is conducted in regard to being kept open for the conduct of public business during the time you have been holding your office? A. Well, I do not know that I could give any opinion on that subject, because I have very little business with the Attorney-General's office.

Q. Have you not had an opportunity of knowing whether the office has been open; have persons not passed there frequently and applied to your office asking for the Attorney-General? A. Yes.

Q. I will ask you to state to the committee what your experience in that regard has been; state as to whether people have come to your office frequently asking for the Attorney-General? A. No, I do not know as to any number of people.

Q. Did anybody come at any time? A. Oh, yes; I have had people at times asking for the Attorney-General.

Q. Was not the Attorney-General's office locked on those occasions? A. I do not know; his office is very frequently locked; I noticed it very frequently locked, with a notice on the door saying that the deputy was in Court, or something of that sort, or was out on business.

Q. You noticed that yourself frequently? A. I have noticed it at times.

Q. Have you ever heard any complaint from people who have had business with the Attorney-General's office?

[Objected to, and question withdrawn.]

THE WITNESS: I do not know of any complaint. Naturally there would not be any complaint made to me.

Q. When you signed this paper, you signed it voluntarily, Mr. Johnston? A. Yes, sir.

Cross-Examination.

GENERAL BARNES: Did you mention to General Hart the circumstance of this paper being presented to you or your having signed it? A. No, sir.

Q. How much work has gone through your office in the way of briefs and transcripts of that nature on account of General Hart? Can you give us any idea? A. Well, I have prepared a statement here at the request of General Hart, taken from the books in the office.

Q. Will you allow me to see it? A. [Witness hands counsel paper referred to]. That is, comparing the work of the Attorney-General that preceded him.

GENERAL BARNES: Now I have this document entitled "Superintendent of State Printing, State of California," showing the number of briefs and pages in 1891 and 1892, and it shows in this recapitulation, during his term, 170 briefs, making 2,640 pages. That is the amount of work that has been done in two years? A. Yes.

Q. I call your attention to this instrument, dated February 20, 1893, showing the amount of work done in Attorney-General Johnson's time, during the years 1889 and 1890, the two preceding years. Under this recapitulation is: 74 briefs, 866 pages. Is that correct? A. Yes, sir.

Q. So that in the first two years of Mr. Hart's time, there came 170 briefs, making 2,640 pages of printed matter from your establishment for him as against 74 briefs of 866 pages of printed matter in the two years preceding? A. Yes, sir.

Q. How about the transcripts? What amount of work have you done in that regard? A. Well, that is included in the briefs and transcripts.

MR. STONE: In each of the Attorney-Generals' terms? A. Yes, sir.

GENERAL BARNES: I would like to file this, Mr. Chairman.

THE CHAIRMAN: Very well.

A. J. Johnston, Superintendent; E. S. Hadley, Bookkeeper; Robt. Alexander, Clerk.

OFFICE OF SUPERINTENDENT OF STATE PRINTING, STATE OF CALIFORNIA,
SACRAMENTO, February 20, 1893.

ATTORNEY-GENERAL JOHNSON.

1889.	Number.	Briefs.	Pages.	1890.	Number.	Briefs.	Pages.
January	2	Briefs.	36	January	4	Briefs.	35
March	1	Briefs.	12	February	2	Briefs.	16
May	7	Briefs.	61	March	7	Briefs.	99
June	1	Briefs.	9	April	8	Briefs.	60
July	4	Briefs.	117	May	6	Briefs.	51
August	6	Briefs.	102	August	6	Briefs.	28
September	1	Briefs.	47	September	1	Briefs.	9
October	2	Briefs.	18	October	7	Briefs.	81
November	5	Briefs.	57	November	1	Briefs.	7
December	1	Briefs.	5	December	2	Briefs.	16
Totals	30	.....	464	.....	44	.....	402

Recapitulation: 74 briefs, 866 pages.

[Marked Exhibit No. 13-A.]

A. J. Johnston, Superintendent; E. S. Hadley, Bookkeeper; Robt. Alexander, Clerk.

OFFICE OF SUPERINTENDENT OF STATE PRINTING, STATE OF CALIFORNIA,
SACRAMENTO, —, 189—.

ATTORNEY-GENERAL W. H. H. HART.

1891.	Number.	Briefs.	Pages.	1892.	Number.	Briefs.	Pages.
January	13	Briefs.	112	January	8	Briefs.	117
February	4	Briefs.	29	February	2	Briefs.	26
March	5	Briefs.	65	March	6	Briefs.	193
April	13	Briefs.	146	April	14	Briefs.	344
May	7	Briefs.	96	May	5	Briefs.	46
June	8	Briefs.	76	June	4	Briefs.	54
July	10	Briefs.	75	July	6	Briefs.	61
August	14	Briefs.	458	August	15	Briefs.	265
September	4	Briefs.	48	September	1	Briefs.	31
October	1	Briefs.	15	October	5	Briefs.	79
November	10	Briefs.	148	November	6	Briefs.	48
December	3	Briefs.	46	December	6	Briefs.	62
Totals	92	.....	1,314	.....	78	.....	1,326

Recapitulation: 170 briefs, 2,640 pages.

[Marked Exhibit No. 13-B.]

MR. DEVLIN: I want to ask you, Mr. Johnston, do you know whether these transcripts and briefs were all written in suits in which the State was a party interested, or do you know anything about it? A. Yes; I understand that they were all cases that the State was interested in.

Q. Well, do you know? A. I would not state positively. I presume they were, though.

Q. Can you state how many of those briefs were written in criminal cases? A. No, sir; I could not.

Q. Do you not know that a change has been made in the rules of the Supreme Court whereby now briefs in criminal cases are required to be printed? A. Yes.

Q. That is the present rule, is it not? A. Yes.

Q. Was that the law during Johnson's term? A. I do not know.

MR. LAYSON: That was the law under Johnson's term the last two years.

MR. DEVLIN: But you do know that briefs in criminal cases are now printed, do you not? That the rules of the Supreme Court require it? A. Yes, sir, I understand so.

Q. And you do not know when that change was made in the law? A. No, sir.

GENERAL BARNES: Are the briefs in the railroad tax cases included in this statement you have made here, or is it exclusive of them? A. I believe that it was exclusive.

Q. Do you know how much work there was in point of briefs and pages in the railroad cases? A. No, sir; I would have to look that up.

Q. Can you give us any idea? Was it not more than six hundred pages of printed matter in addition to what you have mentioned? A. Well, I would not say, General, without looking it up. It was quite a good many pages.

Q. There was a good deal of it, was there not? A. Yes, sir.

THEO. REICHERT.

Sworn.

MR. DEVLIN: Mr. Reichert, you are at present Surveyor-General of the State of California, I believe? A. Yes.

Q. Been occupying that position for the last two years? A. Yes.

Q. Is that your signature? A. No, sir.

Q. Do you know whose signature that is? A. That is my deputy's.

Q. Which one? A. Angier.

Q. Signed by your authority? A. Well, yes and no. I would like to qualify somewhat in that particular, if you will allow me.

Q. I want you to tell the truth; tell what you know. A. I do not propose to tell anything else, Mr. Devlin.

Q. I want you to tell everything in connection with it. A. I think it was some time in September, or perhaps the beginning of October, a gentleman called on me and told me that there was a petition prepared for the State officers to sign, asking an exchange of Mr. Layson to San Francisco and having Oregon Sanders transferred up here. There was a great deal of dissatisfaction, and he said it was the unanimous consent, as near as he could find out, to have that request given to Mr. Hart. "Will you sign such a petition?" I was very busy at the time. I asked for it and he said it was not quite ready and he would send it up. I told him I would see when I saw the petition. I was suddenly called to San Francisco and went down that night. But before going, I think I told my deputy that if such a petition was presented to sign it. I have never seen that petition until to-day.

Q. Did he ever tell you afterwards that he had signed it? A. Never.

Q. Did you ever ask him about it? A. Never.

Q. At that time you were perfectly willing and thought it for the best interest of the State to have a change of deputies, did you? A. Well, you might find that out by consulting a little further.

Q. Might what? A. I say you might draw that to a conclusion by and by, but it was one of those things I did not do cowardly. I did not do it because I had any fault to find with Mr. Layson particularly, but I had heard some complaint as to his not being in the office.

Q. Had the complaints been general? A. No, I cannot say so.

Q. Among the State officers have they been general? A. I have heard quite a number of State officers complain of his absences.

Q. At the time this was presented to you you knew what it was? You knew that the proposition was to be presented to Mr. Hart to change Mr. Layson and bring one of his deputies up here from San Francisco? A. Yes, but I never saw that.

Q. You thought it was a good thing, did you not, and you acquiesced in it. A. Well, yes, I did.

Q. You did not dissent from it, did you? A. No.

Cross-Examination.

GENERAL BARNES: Mr. Reichert, what has the character of your intercourse been with the Attorney-General himself since he has been in office? A. Very cordial, indeed, sir.

Q. How long have you been connected with the administration of the different State offices in this Capitol? A. Six years and nearly two months.

Q. Have you any means of knowing how the amount of work done in the Attorney-General's office during Mr. Hart's time has compared with the work done in the same office in previous years? A. Well, no, I do not know that I could say. I have never had much to do with the office during my six years, until recently—that is, I mean to say, this last year.

Q. Well, have you, at any time, had much to do with Mr. Hart in the matter of his official duties? A. Quite considerable.

Q. In relation to what? A. Land matters.

Q. And during what period? A. Two years; especially for the last eighteen months.

Q. What degree of attention has he given to the matters with which you have been connected? A. Prompt.

Q. Always prompt? A. All excepting once; and the time has not really come for that as yet. There is one pending now that will require considerable research, considerable thought, to decide.

Q. This one that is under consideration now is a matter of very considerable importance, is it not? A. Yes.

Q. A good deal involved? A. A great deal.

Q. Is it a matter on which a man can give an opinion at a jump? A. Knowing what I do about the business, I do not think so.

Q. How much land is involved in this matter which is now under consideration? A. Well, what is immediately involved, about fifteen thousand acres; but it will cut a figure with more.

Q. Do you know of Mr. Hart's going East on business connected with your department? A. I do.

Q. When was that? A. In April, 1892.

Q. Where did he go? A. To Washington.

Q. What did he do there? A. He argued a case about three hours and a half before the Interior Department.

Q. What was the result of it? A. Well, the matter is now pending on review before the Interior Department.

Q. How was that business attended to by Mr. Hart? A. Mr. Hart was complimented by some of the great legal minds in Washington for his able argument.

Q. How long was he absent on that business? A. In Washington?

Q. Yes. I mean from the time he left here until he got back? A. About two months—a little over, I think.

Q. How long were you attending to it in Washington? A. I was nearly five months, sir. I made two trips.

Q. So far as you know, do you know of any business of the Attorney-General's department that has been neglected or slighted by him in any way? A. By the Attorney-General?

Q. Yes. A. No, sir.

MR. DEVLIN: Do you know anything about the conduct of his office when the Attorney-General has not been personally present in Sacramento? A. Only from hearsay, I think. I have never been there but once or twice but what I found some one in, and I wish it to be understood that I have not been there very often. I always knew when General Hart was in town.

Q. Have you and he been close friends? A. We are.

Q. Have been for a number of years? A. Yes.

Q. And all the business that you had with the Attorney-General you referred to him personally, did you? A. I did.

GENERAL BARNES: We desire to file the complaint in the case of The People of the State of California upon the information and complaint of Wm. H. H. Hart, Attorney General, vs. the Board of Harbor Commissioners, and have it made a part of these proceedings.

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, upon the information and complaint of WM. H. H. HART, as Attorney-General, *Plaintiff*,

vs.

BOARD OF HARBOR COMMISSIONERS and C. F. BASSETT, C. O. ALEXANDER, and W. H. BROWN, as members of said Board of State Harbor Commissioners, and E. P. COLGAN, as State Controller, *Defendants*.

The People of the State of California, upon the information and complaint of Wm. H. H. Hart, as Attorney-General, complains of defendants and for cause of action alleges:

I.

That ever since the 5th day of January, 1891, the said Wm. H. H. Hart has been and still is the Attorney-General of the State of California, duly qualified and acting as such.

II.

That ever since the 12th day of March, 1891, the said defendants C. F. Bassett, C. O. Alexander, and W. H. Brown have been and still are the duly appointed, qualified, and acting members of the said Board of State Harbor Commissioners.

III.

That ever since the 5th day of January, 1891, the defendant E. P. Colgan has been, and still is, the State Controller of the State of California, duly qualified and acting as such.

IV.

That on the 2d day of March, 1878, one William Blanding was, by the Governor of the State of California, duly appointed and commissioned State Harbor Commissioner for the term of four years, and until his successor should thereafter qualify and enter upon the discharge of the office, to which said appointment thereafter, on the 6th day of March, 1878, the Senate duly consented and confirmed the same.

That on the 9th day of March, 1878, said William Blanding gave his official bond to the State of California in the sum of \$50,000, with sufficient sureties, which bond was in the words and figures following, to wit:

"Know all men by these presents, that we, William Blanding, principal, and John Center, William M. Lent, Thomas M. Quackenbush, S. Clinton Hastings, H. H. Toland, Albert Dibble, Samuel Crim, and Peter Donahue as sureties, are held and firmly bound unto the State of California in the sum of fifty thousand dollars (\$50,000), and the said

sureties in the following sums respectively, to wit: John Center, \$20,000; William Lent, \$10,000; Thomas M. Quackenbush, \$10,000; S. Clinton Hastings, \$20,000; H. H. Toland, \$10,000; Albert Dibble, \$10,000; Samuel Crim, \$10,000; Peter Donahue, \$10,000; making, in the aggregate, at least two sureties for the penal sum to be paid to the State of California, for which payment well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

"Sealed with our seals and dated this 14th day of March, A. D. 1878.

"The condition of this bond is such that, whereas, the said William Blanding was on the 8th day of March, A. D. 1878, by his Excellency William Irwin, Governor of the State of California, duly appointed and commissioned State Harbor Commissioner for the term of four years; now, then, if the above bounden William Blanding shall well, truly, and faithfully perform all official duties as such Harbor Commissioner now required of him by law, and also all such additional duties as may be imposed upon him by the law of this State, and all duties required of him by any law enacted subsequently to the execution of this bond, then these presents to be null and void; otherwise to be of full force and effect.

"WM. BLANDING.	(Seal.)
"JOHN CENTER.	(Seal.)
"WM. M. LENT.	(Seal.)
"THOS. M. QUACKENBUSH.	(Seal.)
"S. CLINTON HASTINGS.	(Seal.)
"H. H. TOLAND.	(Seal.)
"ALBERT DIBBLE.	(Seal.)
"SAMUEL CRIM.	(Seal.)
"P. DONAHUE.	(Seal.)"

Said bond was duly acknowledged on the 14th day of March, 1878, before William Harney, a Notary Public in and for the City and County of San Francisco, and was on the 16th day of March, 1878, approved by the Governor and State Treasurer of the State of California, and filed in the office of Secretary of State on the 19th day of March, 1878; said William Blanding also took and subscribed an official oath in due time, and the same was filed in the office of the Secretary of State on said 19th day of March, 1878.

That thereupon, and on said last mentioned day, said William Blanding entered upon the discharge of his duties as such Harbor Commissioner, which duties were as prescribed in Title VI, Part III, Political Code of the State of California as it then existed, and continues on the discharge of the duties of his said office as aforesaid, down to and including the 22d day of November, 1882.

V.

That on the 8th day of March, A. D. 1882, one Wm. H. Knight was, by the Governor of the State of California, duly appointed and commissioned State Harbor Commissioner for the term of four years, and to succeed said Wm. Blanding, and on said day said Knight duly qualified and gave his official bond to the State of California, with sufficient sureties, which bond was in the words and figures following, to wit:

"Know all men by these presents, that we, Wm. H. Knight, as principal, and F. S. Wensinger, J. S. Emery, J. N. Knowles, J. Birmingham,

William Witzemann, Moses Heller, and Alexander Badlam, as sureties, are held and bound unto the State of California, in the penal sum of fifty thousand dollars (\$50,000), gold coin of the United States of America, as follows: William H. Knight in the sum of fifty thousand dollars (\$50,000), and the said sureties in the following sums respectively, to wit: F. S. Wensinger, ten thousand dollars (\$10,000); J. S. Emery, fifteen thousand (\$15,000) dollars; J. N. Knowles, ten thousand (\$10,000) dollars; J. Birmingham, ten thousand (\$10,000) dollars; Alexander Badlam, ten thousand (\$10,000) dollars; William Witzeman, fifteen thousand (\$15,000) dollars; Moses Heller, thirty thousand (\$30,000) dollars; making in the aggregate, at least three sureties for the whole penal sum to be paid to the State of California, for which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents. Sealed with our seals and dated this 8th day of March, A. D. 1882.

"The condition of this bond is such that, whereas, the said William H. Knight was on the 8th day of March, A. D. 1882, by his Excellency Geo. C. Perkins, Governor of the State of California, duly appointed and commissioned State Harbor Commissioner for the term of four years; now then, if the above bounden William H. Knight shall well, truly, and faithfully perform all the official duties as State Harbor Commissioner now required of him by law, and also all such additional duties as may be imposed on him by any law of this State, and all duties required of him by any law enacted subsequently to the execution of this bond, then these presents are to be null and void; otherwise to be of full force and effect.

" WILLIAM H. KNIGHT.	(Seal.)
" F. S. WENSINGER.	(Seal.)
" J. S. EMERY.	(Seal.)
" J. N. KNOWLES.	(Seal.)
" J. BIRMINGHAM.	(Seal.)
" W. WITZEMAN.	(Seal.)
" ALEXANDER BADLAM.	(Seal.)
" MOSES HELLER.	(Seal.)"

Said bond was duly acknowledged on said last mentioned day, before Otis V. Sawyer, a Notary Public in and for the City and County of San Francisco, and was, on the 9th day of March, 1882, duly approved by the Governor and the State Treasurer, and on said day was filed in the office of the Secretary of State; said William H. Knight also took and subscribed an official oath in due time, which was filed in the office of said Secretary of State, on said 8th day of March, 1882.

That thereupon on the 23d day of November, 1882, said William H. Knight entered upon the discharge of his duties as such Harbor Commissioner, which duties were as prescribed in Title VI, Part III, Political Code of the State of California, as it then existed, and continued upon the discharge of the duties of his said office as aforesaid, down to and including the 21st day of March, 1883, and that by reason of a contest for his seat by said Blanding, said Knight held said office less than four months.

VI.

That on the 4th day of March, 1880, one W. A. Phillips was, by the Governor of the State of California, duly appointed and commissioned State Harbor Commissioner for the term of four years, to which said appointment thereafter on the said 4th day of March, 1880, the State Senate duly consented and confirmed the same; that on the 8th day of March, 1880, said W. A. Phillips duly qualified as such State Harbor Commissioner, and on said day gave his official bond to the State of California with sufficient sureties, which bond was in the words and figures following, to wit:

"Know all men by these presents, that we, Wm. A. Phillips, as principal, and Wm. T. Garratt and Moses Heller, as sureties, all of the City and County of San Francisco, State of California, are held and firmly bound unto the people of the State of California in the sum of fifty thousand dollars, in United States gold coin, the said sureties in the following penal sum, to wit: The said Wm. T. Garratt in the sum of fifty thousand dollars; the said Moses Heller in the sum of fifty thousand dollars; for the payment of which sum of fifty thousand dollars, well and truly to be paid, in gold coin of the United States to said State of California, we bind ourselves, ours and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 8th day of March, A. D. 1880.

"The condition of the foregoing obligation is such that, whereas the above bounden Wm. A. Phillips has been appointed by the executive authority of the State of California, State Harbor Commissioner; now, therefore, if the said Wm. A. Phillips shall well, truly, and faithfully perform all official duties now required of him by law, and all such additional duties as may be imposed upon him by any law enacted subsequently to the execution of this bond by the State of California, then this obligation to be void; otherwise to remain in full force and virtue. Witness our hands and seals this 8th day of March, A. D. 1880.

" W. A. PHILLIPS.	(Seal.)
" MOSES HELLER.	(Seal.)
" WM. T. GARRATT.	(Seal.)"

Said bond was duly acknowledged before a Notary Public, and was on the 8th day of March, 1880, approved by the Governor and State Treasurer of the State of California, and on said day filed in the office of the Secretary of State; said W. A. Phillips also took and subscribed an official oath attached to said bond, and filed in the office of the Secretary of State.

That immediately thereafter, and on the 8th day of March, 1880, the said W. A. Phillips entered upon the discharge of the duties of said office as State Harbor Commissioner aforesaid, which duties were as prescribed in Title VI, Part III, Political Code of the State of California, as it then existed, and continued upon the discharge of the duties of his said office as aforesaid, down to and including the 21st day of March, 1883.

VII.

That on or about the first day of March, 1880, one Geo. S. Evans was duly appointed, commissioned, and qualified as a member of said State

Board of Harbor Commissioners, and executed a good and sufficient bond to the State of California, in the form as hereinbefore set forth; that he took the oath of office on or about the said day, and entered upon the discharge of his duties as such Harbor Commissioner as prescribed in Title VI, Part III of the Political Code of California, as it then existed, and continued to act as such Commissioner down to and including the 21st day of March, 1883.

VIII.

That during the time between January 1, 1880, and March 21, 1883, the said State Board of Harbor Commissioners had a Secretary, duly elected and employed by them, and also Collectors and Wharfingers, each of whom, respectively, made and executed to the State of California, a good and sufficient bond for the performance of their duties; which bonds were conditioned in the same manner as the bonds of said Commissioners; that it was the duty of said Secretary, Collectors, and Wharfingers to collect the dockage, tolls, and wharfage authorized by said State Board of Harbor Commissioners to be collected, which collections were to be used solely for the improvement of the San Francisco harbor under the directions of said Board, or were to be paid into the State Treasury to the credit of the "San Francisco Harbor Improvement Fund," as provided for by the law creating said Commission, and to be used only for the purposes above designated.

That during the time between said last mentioned dates the Secretary of said Board and some of said Collectors and Wharfingers collected large sums of money for which they did not account to said Commissioners, nor were such sums paid into the State Treasury to the credit of said, or any fund.

IX.

That no part of said money ever came into the possession of said Commissioners, or any of them, and no part of the same was ever used by them, or converted to their own use, nor did they nor any of them embezzle any part or portion thereof.

X.

That on the 27th day of October, 1883, John P. Dunn, the then Controller of State, made a requisition upon said Wm. A. Phillips, whereby he required said Phillips, within twenty days thereafter, to pay the sum, to wit: ninety-one thousand six hundred and seventy-seven dollars and thirty-eight cents (\$91,677 38) into the State Treasury, to the credit of the "San Francisco Harbor Improvement Fund," a copy of which requisition, with the acceptance of service thereof on said Wm. A. Phillips by said Phillips, is in the following words and figures, to wit:

SACRAMENTO, October 24, 1883.

To WILLIAM A. PHILLIPS, member of the State Board of Harbor Commissioners for the period commencing the 4th day of March, 1880, and ending the 21st day of March, 1883:

SIR: Having ascertained that during your term of office, and while you were acting as a member of the State Board of Harbor Commissioners, there was collected by said Board for and on account of the San Francisco Harbor Improvement Fund, the sum of ninety-one thousand six

hundred and seventy-seven dollars and thirty-eight cents (\$91,677 38), for which you have rendered no account, as required by law, and all of which sum you have failed to pay into the State Treasury of the State of California, as prescribed by law, to the credit of the San Francisco Harbor Improvement Fund, or at all, it becomes my duty, and I do now hereby require that within twenty days after you have received this requisition, you shall pay said sum of money into the State Treasury, to the credit of said San Francisco Harbor Improvement Fund. This requisition is made upon you by authority of and in obedience to Section 437, Political Code of the State of California, and your failure to comply herewith will subject you to the penalties therein provided.

Respectfully yours,

JOHN P. DUNN, State Controller.

(Indorsed:) I hereby acknowledge service of the original requisition, of which the within is a true copy, this 27th day of October, 1883.

W. A. PHILLIPS.

XI.

That on the 27th day of October, 1883, John P. Dunn, the Controller of the State, made a requisition upon said William Blanding whereby he required said Blanding within twenty days thereafter to pay said sum, to wit: forty-one thousand six hundred and ten dollars and ninety-seven cents, into the State Treasury, to the credit of the San Francisco Harbor Improvement Fund, a copy of which requisition, with the acceptance of service thereof on said William Blanding by said Blanding, is in the following words and figures, to wit:

SACRAMENTO, October 24, 1883.

To WM. BLANDING, member of the State Board of Harbor Commissioners, for the period commencing the 4th day of March, 1878, and ending November 25th, 1882:

SIR: Having ascertained that during your term of office, and while you were acting as a member of the State Board of Harbor Commissioners, there was collected by said Board, for and on account of the San Francisco Harbor Improvement Fund, the sum of forty-one thousand six hundred and ten dollars and ninety-five cents (\$41,610 95), for which you have rendered no account, as required by law, and all of which sum you have failed to pay into the State Treasury of the State of California, as prescribed by law, to the credit of the San Francisco Harbor Improvement Fund, or at all, it becomes my duty and I do now hereby require that within twenty days after you shall have received this requisition you shall pay said sum of money into the State Treasury to the credit of said San Francisco Harbor Improvement Fund. This requisition is made upon you by authority of and in obedience to Section 437, Political Code of the State of California, and your failure to comply herewith will subject you to the penalties therein provided.

Respectfully yours,

JOHN P. DUNN, State Controller.

(Indorsed:) I hereby acknowledge service of the original requisition, of which the within is a true copy, this 27th day of October, 1883.

WILLIAM BLANDING.

XII.

That on the 5th day of February, 1884, John P. Dunn, the Controller of the State, made a requisition upon said William H. Knight, whereby he required said Knight, within twenty days thereafter, to pay said sum, to wit: \$51,072 51, into the State Treasury, to the credit of the San Francisco Harbor Improvement Fund, a copy of which requisition, with the acceptance of service thereof on said William H. Knight, is in the following words and figures:

To WILLIAM H. KNIGHT, member of the State Board of Harbor Commissioners for the period commencing the 23d day of November, 1882, and ending the 21st day of March, 1883:

SIR: Having ascertained that during your term of office, and while you were acting as a member of the State Board of Harbor Commissioners, there was collected by said Board, for and on account of the San Francisco Harbor Improvement Fund, the sum of fifty-one thousand and seventy-two dollars and fifty-one cents (\$51,072 51), for which you have rendered no account, as required by law, and all of which sum you have failed to pay into the State Treasury of the State of California, as prescribed by law, to the credit of the San Francisco Harbor Improvement Fund, or at all, it becomes my duty, and I do now hereby require that within twenty days after you shall have received this requisition you shall pay said sum into the State Treasury, to the credit of said San Francisco Harbor Improvement Fund. This requisition is made upon you by authority of and in obedience to Section 437, Political Code of the State of California, and your failure to comply herewith will subject you to the penalties therein provided.

Respectfully yours,

JOHN P. DUNN, State Controller.

(Indorsed:) I hereby acknowledge service of the original requisition, of which the within is a true copy, this 5th day of February, 1884.

W. H. KNIGHT.

XIII.

That thereafter, in the year 1884, suits were brought in the name of the people of the State of California against said Commissioners, William Blanding, W. A. Phillips, and W. H. Knight, and their sureties upon their official bonds, which suits were defended by said Commissioners, the answers joining issues with the allegations contained in said complaints upon all matters other than the appointment, acceptance of the office, and the execution of said bonds.

That said suits were pending at the time the Legislature of the State of California, in 1891, passed an Act, approved March 31, 1891, Statutes of 1891, page 268, in the words and figures following, to wit:

"An Act authorizing the Attorney-General to dismiss those certain actions pending in the Superior Court of the City and County of San Francisco, and numbered eleven thousand seven hundred and six, eleven thousand nine hundred and twenty-five, and eleven thousand nine hundred and twenty-six, upon payment to him for the use of the State of certain moneys.

"The people of the State of California, represented in Senate and Assembly, do enact as follows:

"SECTION 1. The Attorney-General is hereby authorized, in his discretion, to dismiss those certain actions now pending in the Superior Court of the City and County of San Francisco, State of California, wherein The People of the State of California are parties plaintiff, and W. A. Phillips and others are parties defendant, number eleven thousand seven hundred and six; and William H. Knight and others are parties defendant, number eleven thousand nine hundred and twenty-five; and William Blanding and others are parties defendant, number eleven thousand nine hundred and twenty-six, upon the payment to him for the use of the State of such amounts as by the cash books kept by the Secretary of the Board of State Harbor Commissioners appear to have come into the possession of said Board, and which have not been paid into the State Treasury; or to dismiss the same, in his discretion, as to any defendant therein, upon payment by such defendant of his just proportion of said amounts."

XIV.

That no judgment was ever entered in said actions, or any of them, and said Commissioners, and defendants therein, denied their liability for the whole and every part of said moneys thus collected and appropriated by said Secretary, Collectors, and Wharfingers.

XV.

That before the passage of the Act above set out, the matter was fully investigated by the Senate Committee to whom said Act was originally referred, and the amount shown to be a deficit, according to the cash books kept by the Secretary of the Board of State Harbor Commissioners, as found by the said committee and as claimed to appear by said books, was the sum of twenty-three thousand and thirty-six dollars and forty-seven cents (\$23,036 47), of which amount the defendant Knight and his sureties in said action asserted and claimed that said George S. Evans, one of the said Harbor Commissioners employing said Secretary, Collectors, and Wharfingers, was answerable for and should pay one third, but said Evans or his bondsmen were not sued by the then Attorney-General and State Controller, and no part of said sum can be now collected from said Evans or his sureties, by reason of the time limited by the statute of limitations within which to bring a suit to recover the same having expired prior to said Hart taking office as Attorney-General. That after due examination by said Attorney-General it appeared to him, and, exercising due caution, he found and decided, that the portion of said \$23,036 47 claimed by the State to be properly chargeable to said George S. Evans, and Lloyd Tevis and others, sureties on his official bond, was and is the sum of \$7,678 82.

XVI.

That by virtue of an Act of the Legislature aforesaid, the Attorney-General in his discretion was authorized to settle with any one or more of said defendants on payment of what the Attorney-General considered his or their just proportion of said deficiency.

That accordingly, on the 30th day of August, 1891, the said suit against said W. A. Phillips and his bondsmen was settled and com-

promised by the payment of one third of said amount of \$23,036 47, to which amount was added the costs, clerk's fees, and entry of dismissal, \$12 50, expenses of serving summons previously paid by the State, \$4 50, and reporter's fees theretofore paid by the State, \$30, making a total amount of \$7,725 82, which sum complainant, Wm. H. H. Hart, then determined to pay into the State Treasury to the credit of the General Fund, but upon a conference with the attorney of the Board of State Harbor Commissioners he was informed that said Board contended that said moneys belonged to and should be paid into the San Francisco Harbor Improvement Fund; thereupon said W. H. H. Hart desired a suit brought to test the said question, but after a consultation it was decided by said parties to await the settlement of all said suits before submitting the question in controversy for decision.

That thereafter, on the 25th day of October, 1892, said suit against said W. H. Knight and his bondsmen was settled and dismissed upon the payment of two thousand four hundred and four dollars and thirty-six cents (\$2,404 36), of which the sum of \$23 was costs theretofore advanced by the State.

The said William H. H. Hart, Attorney-General, then considered, and ever since hitherto has considered, that said sum of \$2,404 36 was the just proportion of said \$23,036 47 to be paid by said W. H. Knight and his bondsmen.

That said suit against said Blanding and his sureties was settled in the latter part of November, 1892, and was not dismissed or disposed of until the 7th day of February, 1893. That the total amount paid in settlement of said last mentioned action was one third of the sum of \$23,036 47, and in addition \$15 74 clerk's fees, costs of Court, \$12 50, and Sheriff's fees, \$10 50, for the serving summons, heretofore paid by the State, making a total of \$7,717 56.

XVII.

The total amount collected in settlement of said several actions, as authorized by said Act of the Legislature, including the said costs and expenses, was seventeen thousand eight hundred and forty-seven dollars and seventy-four cents (\$17,847 74).

Said plaintiff alleges that said money so collected as aforesaid, under and by virtue of the provision of said Act of the Legislature hereinbefore set out, was and still is the property of the State of California, and should be paid into the State Treasury to the credit of the General Fund for the use of the State, and that no part of said moneys belongs to or should be paid to the credit of the San Francisco Harbor Improvement Fund.

XVIII.

That the defendants, the Board of State Harbor Commissioners and each member of said Board, have contended and still contend and assert that said moneys so paid in settlement of said suits, and the whole thereof, should be paid to said Board of Harbor Commissioners to the credit of the San Francisco Harbor Improvement Fund, to be used under the direction of said Board of State Harbor Commissioners and the members thereof, in carrying out the provisions of Title VI, Part III, of the Political Code of the State of California, relating to said Board, and by reason of such contention claim said moneys adversely to the

State of California, and that such moneys should be used solely for the benefit of the improvement of the San Francisco harbor, and not for the benefit of the whole body of taxpayers of the State of California.

XIX.

That it is the duty of the defendant E. P. Colgan, as State Controller, to certify said moneys into such fund as the Court may direct.

XX.

Plaintiff further alleges that at one time the defendant, E. P. Colgan, State Controller, was of opinion that said money belonged to the General Fund of the State; later he concluded that it should be paid to the credit of the San Francisco Harbor Improvement Fund, and now is and has been for some time doubtful as to which fund it belongs.

XXI.

Plaintiff further alleges that said W. H. H. Hart has taken counsel with attorneys learned in the law, and by them has been advised not to pay over said money until a judgment and determination has been had by a Court of competent jurisdiction as to which of said funds said moneys belong; that in no other way can the sureties on said Hart's official bond be saved from liability.

XXII.

Said W. H. H. Hart further alleges that in making a settlement in accordance with said Acts of the Legislature he used due diligence in closing the matter, and no delay was occasioned on his part; that he always has been and still is ready and willing to pay said moneys to the credit of the fund to which the Court may determine said moneys belong.

Wherefore, plaintiff prays judgment of this Court determining as to which of the funds mentioned in this complaint said moneys belong, which were heretofore paid pursuant to law to the Attorney-General of the State, in settlement of the suits heretofore brought by the People of the State against said ex-Harbor Commissioners, and other persons referred to in the Act of the Legislature, of the State of California, approved March 31, 1891, hercinabove set out; and that by said judgment of the Court declare whether said moneys belong to the General Fund of this State, or to the San Francisco Harbor Improvement Fund, or should be paid directly to the State Board of Harbor Commissioners; and for such other and further relief and order as may be just in the premises.

WM. H. H. HART,
Attorney-General of California, Attorney for Plaintiff.

STATE OF CALIFORNIA, }
CITY AND COUNTY OF SAN FRANCISCO. } ss.

Wm. H. H. Hart, being duly sworn, says, that he is the Attorney-General of said State of California, plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents

thereof; that the same is true of his own knowledge, except as to matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

WM. H. H. HART.

Subscribed and sworn to before me, this seventh day of February, 1893.

L. H. BROWN, Clerk.
By D. S. CULP, Deputy.

[SEAL OF THE SUPREME COURT.]

In the Superior Court of the City and County of San Francisco, State of California. Department No.

THE PEOPLE of the STATE OF CALIFORNIA, upon the information and complaint of WM. H. H. HART as Attorney-General, *Plaintiff*,
vs.

BOARD OF STATE HARBOR COMMISSIONERS and C. F. BASSETT, C. O. ALEXANDER and W. H. BROWN, as members of said Board of State Harbor Commissioners, and E. P. COLGAN, as State Controller, *Defendants*.

Action brought in the Superior Court, City and County of San Francisco, State of California, and the complaint filed in said City and County of San Francisco, in the office of the Clerk of said Superior Court.

The People of the State of California send greeting to Board of State Harbor Commissioners, and C. F. Bassett, C. O. Alexander, and W. H. Brown, as members of said Board of Harbor Commissioners, and E. P. Colgan, as State Controller, defendants.

You are hereby required to appear in an action brought against you by the above named plaintiff in the Superior Court, City and County of San Francisco, State of California, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county; or, if served elsewhere, within thirty days.

The said action is brought to obtain a judgment of said Court, determining as to which of the funds mentioned in the complaint certain moneys properly belong, which were heretofore paid, pursuant to law, to the Attorney-General of this State, in settlement of suits heretofore brought by the People of the State against certain ex-Harbor Commissioners and other persons referred to in the Act of the Legislature of the State of California, approved March 31, 1891, in the complaint set out, and that by said judgment the Court declare whether said moneys belong to the General Fund of this State or to the San Francisco Harbor Improvement Fund, or should be paid directly to the Board of State Harbor Commissioners. Plaintiff prays for general relief.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiffs will apply to the Court for the relief in said complaint demanded.

Given under my hand and seal of the said Superior Court, at the City and County of San Francisco, State of California, this seventh day of February, in the year of our Lord one thousand eight hundred and ninety-three.

M. C. HALEY, Clerk.
By D. J. GORDON, Deputy Clerk.

[SEAL OF COURT.]

GENERAL BARNES: Would you, gentlemen, like to examine Mr. Layson now?

MR. DEVLIN: Yes.

W. H. LAYSON.

Sworn.

GENERAL BARNES: You can ask about his business and the office.

THE CHAIRMAN: I will ask the witness a few questions. Are you in the habit of doing private business—taking private cases in connection with your office? A. Yes; the last year I have, to a small extent.

Q. Which takes you from this building frequently? A. Very little.

Q. Well, as often as you have a case you are outside of the building? A. Yes.

Q. Can you state approximately the number of cases you have had on one side or the other during the last year, or during your incumbency? A. I do not think, since I have been here in this office, I have been in Court ten days. I am just running through my mind the number of cases—brief spaces of time. I would run down perhaps, and argue a demurrer, I think, or something of that kind. I have only tried, I think, myself, two or three cases.

Q. And you collect fees for that; you do not do it for fun? A. Well, that is the intention, but I have not had much success at that, though.

Q. You defended a case for the Directors of the State Agricultural Society, I believe? A. Yes.

Q. At whose instance? Whose request? How did it come up? A. Well, my partner was employed in the matter, and I was doing it as a firm matter.

Q. Was the Attorney-General requested to defend those cases primarily, or in the first place? A. I do not know. Personally, I do not know.

Q. You brought in a bill for services rendered? A. Yes, sir.

Q. How much? A. Well, my partner sent in a bill for \$2,500, I believe, on certain conditions.

Q. The bill was for \$2,500? A. Yes.

Q. Was it allowed? A. No; I want to state that that bill was put in for that amount, provided they would settle without suit. I do not want it understood that that was the limit at all.

Q. Well, that was, in fact, the amount presented? A. Yes.

Q. And they allowed less? A. Well, the matter is not finally settled yet, I believe.

Q. Yes; settled so far as the Courts are concerned, and the bill has been now transferred to the Legislature to pay the claim? A. Yes.

MR. DEVLIN: What the committee want to know on that subject is this: Do you know how you came to be employed in that case? A. Well, by virtue of the employment of my partner, I suppose.

Q. Do you know whether or not the Directors came to the Attorney-General, expecting the Attorney-General to defend them as State officers? A. No, sir; personally I do not know anything about that.

Q. Well, do you know it anyway, personally or otherwise? A. Only through hearsay.

Q. Well, how did you hear it? A. Well, since that bill has been up there has been some kick about the bill. Some of those old "Shylocks" have intimated that I ought to have done it.

Q. When you say old "Shylocks," whom do you mean by old "Shylocks?" A. Well, millionaires who have services performed for them and do not want to pay for it.

Q. And their names are what? Is one of them named Cox? A. Well, there are twelve of them.

Q. Whom do you mean by "Shylocks?" A. Millionaires who do not want to pay for anything. I do not care to go into that because it is hearsay matter, and my information is hearsay.

Q. You mean your statement that they are "Shylocks" is hearsay? A. Oh, well, Mr. Devlin, you understand your function as well as I understand mine.

THE CHAIRMAN: Let me ask you a question about this. It is a matter of curious speculation. You have got me included among the millionaires. If there is any justification for the suspicion, I want to have some knowledge of it. A. I understand you came in very recently, Mr. Mathews.

Q. Time enough to get something to say about it.

GENERAL BARNES: He wants to know if he is a millionaire. A. I hope he is a millionaire. I wish everybody well.

MR. DEVLIN: Do you understand that the Directors are Shylocks? A. Well, that is not a matter to come up here. In the first place I will state in reference to this investigation of Attorney-General Hart, that whatever I have done I am responsible for myself, and it has no bearing upon him. You are undertaking to impute these things to him. I will state that my relations with the office have been rather independent. I want to say this now, and I propose to have a hearing. I have been abused and blackmailed enough and propose to state this: That whatever I do I am responsible for myself. I go ahead with my work. I write briefs and opinions and letters frequently without consulting with the Attorney-General, and if there is anything that does not suit the whims of every fantastic individual in this State, it is not chargeable to Attorney-General Hart, but to myself, and I am ready at all times to answer to that when I have an opportunity.

Q. You say you have been blackmailed. Who do you mean has blackmailed you? A. That is none of your business.

Q. Has anybody ever blackmailed you? A. Well, information has been received by me—

Q. I would like to know? A. (Continuing.) That persons who have lawsuits have brought information of that matter to this committee. It has no legal relation here whatever, and if any person thinks that he is going to stop my services by unduly trying to influence me, either in the committee or Assembly, they are badly mistaken. That is all there is about it.

Q. Has anybody ever attempted to blackmail you; if so, who? A. Well, I should consider that if a person who is sued, who should be on the opposite side of me, should present letters to this committee or any other committee, thinking thereby that my services would be discontinued, it would be an unfair advantage to be taken of me.

Q. You mean by "blackmail," that such persons as have given letters to this committee have been blackmailing you, do you? Is that what you mean? A. I do not care to go into an explanation of that.

Q. You desire to make certain assertions without explaining the details? A. You can put your own construction on it to suit yourself best, and you will do that regardless.

Q. I will state, Mr. Layson, that what the committee desire to get at is this: It has been—so the committee have informed me—stated to them that when the Directors of the Agricultural Society were sued for damages alleged to have occurred by the breaking of the stand at the State Fair grounds, the Directors repaired to the Attorney-General's office, believing it to be the duty of the Attorney-General to defend them by virtue of his official position and because they were State officers; that the Attorney-General said to that, "You see Mr. Layson about it;" that they saw you, believing that you were performing the functions that you should, by virtue of your position as a State officer, and as a deputy of the Attorney-General. That you then suggested that another attorney be employed, or something of that kind, which was done; that a suit was brought in Court, and then a bill was presented by you and your partner to the Agricultural Directors for \$2,500? A. I cannot remember all that. Just give me a chance as you go along.

Q. Let me get through— A. No member of that Board has ever told me that the Attorney-General had authorized me to conduct that suit. I have never suggested to any member of that Board that they employ any counsel, either.

Q. You do not know anything about that? A. I say that it has not occurred. That is the truth.

Q. The Chairman is trying to get at that fact, and I do not think you understood him.

THE CHAIRMAN: You see, the Attorney-General himself having refused to take the stand, makes it necessary for us to do the best we can. A. I can explain that to you.

Q. Hold on; you stopped in order for me to state our case, and I am doing it. The Attorney-General having refused to take the stand, we have to get this information from some other source, and if you cannot give it to us we will have to go where we can get it, and that is all there is of it. I want to know if the Attorney-General refused to do it, and directed them to secure you, and then you refused to do it, and insisted on them having other counsel. If you want to explain that, all right. A. I have never had any instructions from the Attorney-General to conduct that suit.

Q. You were conducting it then merely as a private individual? A. Yes, sir; entirely so. And I have never instructed any member of that concern to employ any attorneys. I have been in that case because my partner, I suppose, was employed.

MR. DEVLIN: Now, General Barnes suggests that we ask some questions about the performance of your duties as an officer during the last two years. I will ask you first, where you are stationed, Mr. Layson? A. Oh, right here in this office. There is no question about that.

Q. Will you state to the committee whether you have been in your office every day, during working days and business days, for the last two years? A. Now, whatever statement I make is subject to the fallacy or the liability that human mind is liable to err. What I state is to the best of my knowledge, and if I make a mistake it is of the head, and not of the heart. I have been here, I think, ever since the 29th day of December. I came here several days before taking office. The best of my recollection is I have worked every holiday from that day to this, either all the day or a fraction of it. I have made it a rule to come here. The first sixteen months I boarded at the hotel. I came

here of mornings very early—half past 7 or 8. I think that was my rule—to get here about 8, sometimes half past 7, and go to my supper at 5 or 6 o'clock. Since last June I have been keeping house, and I have been coming here about 8 or a quarter past; sometimes as late as 9, but my rule is 8, or a quarter past; sometimes half past, unless there are some other members of the office here; sometimes then I am a little late. I keep up my rule of staying here until 5 or 6 o'clock. It is generally about 6 when I get away, sometimes 7, and has been as late as 8 before I got to supper. My folks have been complaining a good deal about the lateness of the hour of getting home to my supper. I go to my lunch generally about half past 12—after the mail comes in. Sometimes I do not go until half past 1 or 2. I have always made it a rule when I go out, unless the porter was about to leave instructions with, to lock the door. Now, if the Assembly wants the door left open when I am not there, I will do it. But I understand there is a law that a State officer is chargeable, out of his salary, for three times the value of any book that he has out of the State Library, and necessarily I generally have a great many or quite a number of books out of the library, and there are a good many tramps come here—I do not mean to reflect on anybody, however—but then a great many stragglers come in, and I have felt that it was my duty when I did go out to lock up unless the porter was around, and then I have him keep it open. Now then, I have been away—I have never taken a vacation since I have been here except one, and then I went to Seattle and tried a lawsuit all the time I was there. I did not have very much fun out of that. I was down to Los Angeles last April, I think, two weeks. Went down there to attend the Supreme Court. At the request of the District Attorney of Yolo County, the Attorney-General was called upon to prosecute the Bemmerly case, a murder case. The Attorney-General sent me, and I think I was there eight days. I have been in San Francisco several times attending the Supreme Court, but so help me God, I do not think a day has ever passed in the two years I have been here, except the times I have been in the Supreme Court and at Seattle, that I have not been to my office some portions of that day. Banking hours are from 10 to 3, and I go to the bank probably twice a week. I always strike an average now, some weeks three times and may be some weeks none, perhaps twice is an average. I have to go during office hours, because the banking hours are from 10 to 3. It probably takes me twenty minutes to run down there and back. I cannot say exactly; maybe thirty minutes, maybe fifteen minutes, maybe ten. I generally lock up when I go. But as I say, if it is the sense of the Assembly that that office should be kept open, I will leave it open, if there is any virtue in that.

MR. DEVLIN: Wait a moment, Mr. Layson. I thought you were going to get a stopping place some time, but you don't seem to have arrived at that period yet. I have been asking you some questions, and I think it is better to have a question answered directly, without going into other matters. A. Oh, well, I will drop that. I want to make just a few more statements regarding the work performed here.

THE CHAIRMAN: Well, the matter of inquiry, more particularly in your case, is directed to how much outside work you did which involved the necessity of your being absent? A. I only just want one minute.

I will state that during the time I have been here I have written eighty-six briefs, covering 1,088 pages, citing 3,392 authorities. For every authority cited, a man must necessarily consult and analyze a dozen others. As I said, I tried the case of *The People against Bemmerly*—

Q. I think there has never been any doubt about the plentitude of opinions and briefs emanating from that office. A. Well, I am pretty well before the public and charged with incompetency by the yahoos around here, and I just simply want to—

MR. DEVLIN: I did not quite catch that—"yahoo?" What is a "yahoo?" A. You will learn later on what a "yahoo" is. I will state that I have an office down town, which I pay rent for, and my partner remains there. I do not think all the time I have been in connection with him I have spent six hours in that office.

Q. When you say "yahoos," do you mean those who have testified on the stand? A. Yes; some of them. I should include yourself under that list as a pronounced type of the "yahoo." I will state that, in connection with the office, since December 5, 1849, to January 5, 1891, when we took office formally, about 1,215 criminal cases were decided, being an average of less than thirty criminal cases a year for a period of forty-one years and six months. The number of criminal cases that have come to our consideration during the administration are 159, all briefed or disposed of, except 12, which are not yet due. Regarding the civil cases, the report shows 29 civil cases in the Supreme Court, all closed except 7; 47 in the Superior Court, 14 closed; 26 tax suits; 96 cocheat suits, mostly settled. Total civil cases, 247. Add criminal cases, 159, and it makes a total of 406 cases; an average of 203 a year, instead of 30, the average of past years. The civil cases are increasing very fast. I will file this statement.

The statement is as follows:

Memorandum of work of W. H. Layson, First Deputy Attorney-General.

Written 86 briefs, covering 1,088 pages; citing 3,392 authorities. Where one case is cited, one may consider and examine a dozen others.

Tried case of *People vs. Bemmerly*, at Woodland, against six lawyers. Took about eighty-one days.

In one case alone I cited 153 cases.

Come to office in the morning from 7:30 to 8:30, and remain usually till near 6 p. m. Friday is law day. Some days at Court on Friday an hour or two. Not every Friday.

Have an office at No. 1009 Seventh Street, Sacramento. Mr. Brusie remains there. We pay rent. Furnish our own supplies.

Written many opinions and letters. Promptly execute the work assigned me. Argued many cases in Supreme Court for the State.

Jackson—Briefed 28 criminal cases.

Sanders—Briefed 21 criminal cases. Written many opinions and letters. Tried Bernard case.

Memorandum of work in Attorney-General's office: From December 8, 1849, to January 5, 1891, about 1,215 criminal cases were decided, being an average of less than 30 criminal cases a year for that period of forty-one years and six months.

The number of criminal cases that have come to our consideration during the present administration are 159, all briefed or disposed of except 12, which are not yet due.

Civil Cases.—The report shows 29 civil cases in the Supreme Court, all closed except 7; 47 in Superior Court, 14 closed; 26 tax suits; 96 escheat suits, mostly settled. Total civil cases, 247; add criminal, 159; total, 406, an average of 203 a year.

The Attorney-General has participated in many suits—Tahiti orange cases at Los Angeles, a case of gigantic importance to the State, Indian war bond case, railroad tax suits, etc.

In one half of the present administration enough criminal cases alone have been handled to be equal to one eighth of all the criminal cases disposed of in the forty-one years and six months preceding.

Civil business is increasing very rapidly.

[Marked Exhibit No. 17.]

MR. DEVLIN: When did you first learn that the State officers were yahoos, Mr. Layson? A. Well, it is immaterial.

Q. Did you sign these letters? Will you state if these letters were written by you, Mr. Layson? I simply want to identify them as coming from you. I have not read them yet. I will see what they are afterwards. A. I think I wrote those.

MR. DEVLIN: I do not suppose the gentlemen want them read?

MR. STONE: No.

MR. DEVLIN: I simply want to introduce them to show that the office was used for outside work and that machinery of the State was used.

THE CHAIRMAN: To show that material and machinery of the State was used?

THE WITNESS: I want to explain that case now—you talk about machinery of the State. It is a matter that the Attorney-General never had anything to do with, and never knew about it, that I know of. Mrs. Etta Ingham, a widow lady, stated that when she was living with her husband he became a profligate—

THE CHAIRMAN: If it has nothing to do with the points inquired about I do not know as we care to hear it. A. Well, you have got it now, and I want to explain it. It has gone before the public, and some of the letters have been printed.

THE CHAIRMAN: We do not want that explained if it goes into a private matter.

MR. DEVLIN: I understand the only thing is this: This charge has been made before the Committee on Ways and Means—and the committee desire to investigate into it—that the Deputy Attorney-General has been conducting private business? A. That is charity work—there is no fee in it. I want to explain that case.

MR. DEVLIN: If you will wait a minute I will tell you what we want to know. Do you think you can wait until I state what we want to know? A. I will endeavor to. I do not know whether I can or not.

MR. DEVLIN: We want to know whether this paper was bought by the State, whether this typewriter was paid by the State, and whether the porter who carried this letter was also paid by the State. Now, that has no reference whatever to the contents of the letter. I want to know whether this material is property of the State, and whether the State officers have been used for conducting a private suit. That is all we want to know; not as to the character of the suit, because it involves, probably, some secrets of your client that we do not want to know, and have nothing to do with. Now, that is all there is of it. A. That

paper, I suppose, belongs to the State. I wrote it myself. There was nobody paid to write that letter.

Q. Well, it is typewriting? A. I wrote it myself.

Q. And the porter of the State carried one of them, and delivered it as a messenger? A. I do not remember whether they were mailed or delivered.

Q. Now, that is all we want to know about those letters. A. I will just state in connection with them that I tried to settle that matter up. It was a family matter; a suit between a daughter-in-law and grandmother and grandchildren about some property.

Q. We do not want to go into that. A. The lady is in destitute circumstances and her mother is now lying with paralysis, cannot raise her hand from her body, and I thought I was doing a charitable act in trying to adjust a settlement and get the property in a shape where the grandchildren would be protected.

GENERAL BARNES: I will ask you, Mr. Layson, if you have made any charge for that? A. Charge. Why, I never charged a cent. I paid \$11 25 costs myself to commence the suit and try to protect these people.

Q. You were doing a charitable act? A. Yes.

MR. DEVLIN: One of those letters contains a threat that if settlement is not made soon— A. No, there is no threat there.

Q. Well, a threat that if settlement was not made suit would be brought. A. I would like to state, Mr. Chairman, just one thing. To the best of my recollection, ten thousand six hundred and seventeen letters have gone out of our office, and about three hundred and fifty-five official opinions since Mr. Hart has been in office.

THE CHAIRMAN: The committee desire to know, Mr. Layson, whether this particular envelope, and letter contained therein, was taken by the porter of the office to the address? A. I do not remember as to whether I mailed it or whether I sent it.

Q. If it was delivered personally, do you know whether it was taken by the porter of the office, or in another way? A. I don't remember.

MR. DEVLIN: I will just file this letter from Mr. Miller to the Chairman as an exhibit.

Estee, Fitzgerald & Miller, Attorneys and Counselors at Law, 419 California Street. John H. Miller, W. F. Fitzgerald, Morris M. Estee. P. O. Box 2270.

SAN FRANCISCO, CAL., February 4, 1893.

[Hon. MATHEWS, Chairman Assembly Com. W. and M., Sacramento, California].

DEAR SIR: I have this day sent the Controller a statement of the moneys collected by Attorney-General W. H. Hart in the Harbor Commissioner cases; and I herewith inclose you, on a separate sheet, a copy thereof. From it you will observe that General Hart collected \$14,327 38 as early as July and August, 1891—over one year and six months ago.

I would like to call your attention to Subd. 13, Sec. 433, and to Section 437 of the Political Code, as applicable to this case.

In regard to the bill of Langhorne & Miller for services, I would venture to suggest for your consideration, whether it is just to make us suffer for the delinquencies of State officials, after we have faithfully served the State and collected a large sum of money. Whether the

moneys go into the General Fund or into the Harbor Fund, they are State moneys recovered for the use of the State; and in either event, it would seem just that the Legislature pass a bill for our relief.

Very truly yours, etc.,

J. H. MILLER.

MONEYS RECEIVED BY ATTORNEY-GENERAL HART, IN HARBOR COMMISSIONER CASES,
UNDER ACT OF LEGISLATURE, MARCH 21, 1891.

Aug. 30,	
1891—July 25, from case of People vs. Phillips, No. 11,706, Superior Court, S. F.	\$7,725 82
1891—Aug. 1, from case of People vs. Blanding, No. 11,976, id.	6,601 56
1892—Oct. 25, from case of People vs. Knight, No. 11,925, id.	2,404 36
1892—Nov. 25, from case of People vs. Blanding, No. 11,926, id.	1,120 00
Total	\$17,851 74

[Marked Exhibit No. 18.]

The committee took an adjournment to meet at San Francisco, at the new City Hall, in the election-room, at 11 o'clock A. M. to-morrow.

SAN FRANCISCO, Tuesday, February 21, 1893—11 o'clock A. M.

The committee met and the following proceedings were had:

J. H. MILLER.

Sworn.

MR. DEVLIN: Your name is J. H. Miller? A. Yes.

Q. You reside at San Francisco? A. Yes, sir.

Q. Attorney at law? A. Yes, sir.

Q. You were connected, on behalf of the State, with the suits brought by the State against Knight, Blanding, and others, to recover money from the Harbor Commissioners and their bondsmen? A. Yes.

Q. Did you have anything to do with the settlement of those suits, or the compromise, or payment of money to the Attorney-General? A. The firm of Langhorne & Miller did, but Mr. Langhorne had more immediate charge of the business.

MR. BUDD: How is that? A. I say the firm of Langhorne & Miller had charge of the matter, but Mr. Langhorne had more immediate charge of the matter than I had. I had no more than a general knowledge of the business as it passed through the office, as I have of all business that we consult about.

Q. Can you tell the committee who paid the different sums agreed upon in compromise to Mr. Hart and the dates when they were paid? A. Well, all the amounts, except eleven hundred odd dollars which was paid by Thomas M. Quackenbush, I understand, were paid directly by the defendants in those suits to the Attorney-General. The \$1,120, or whatever it was, that Quackenbush paid through our hands.

Q. You know nothing personally, then, about the payment of the other sums? A. No, nothing personally except what I learned.

Q. Can you give us the names of persons who do know? A. Well, I took the amounts that were paid from data that appeared in the complaints of the cases themselves, which are matters of record. There appears from those cases that—

MR. STONE: We had better have the record, then.

MR. DEVLIN: His testimony on that point does not establish anything. It just enables the committee to get the witnesses.

A. I will state that the Controller telegraphed me to send him the amounts. And I went up to the new City Hall and examined the records to find the amounts. That is about the only way I could find them. In the first place I went around to the different attorneys who had been representing the defendants, and they told me to go to the records and find them all there; that they were matters of record. And I went up to the new City Hall and I found that on July 25th, 1891, in the Phillips case, No. 11,706, \$7,725 82 had been paid to the Attorney-General.

Q. Does that say by whom it was paid? A. That was the Phillips case, and the defendants in that case were William A. Phillips, William T. Garratt, and Moses Heller. Attorneys for defendants were Sullivan & Sullivan, Arthur Rodgers, E. S. Heller, Louis H. Sharp, and H. A. Powell. These appear, from the records, to have been paid by the defendants on account of those cases.

THE CHAIRMAN: Does it appear what individual paid it in? A. Well, I do not remember that; I think it simply says the defendants; but the records there will show. I never took the amounts; it is all a matter of record there. And that in the Blanding case, on August 1, 1891, there was \$6,601 56 paid to the Attorney-General. Now, in order to arrive at that amount, we had to do a little figuring in that case; but we figured it out, and I think that is exactly correct. On October 25, 1892, in the Knight case, there was \$2,404 36 paid. And the only remaining amount was November 25, 1892, in the Blanding case, that Mr. Quackenbush paid, which passed through our office, and which was \$1,120; and the whole of it figured \$17,851 74. I got that information from the County Clerk here, in the records, and sent it to the Controller.

Q. And to the Chairman of the Ways and Means Committee? A. To the Chairman of the Ways and Means Committee.

Q. Did you have anything to do with the settlement of the case? A. I did not have anything, personally, to do with the settling of the case.

Q. Were you attorneys of record at the time the cases were settled with the Attorney-General? Q. I understand we were. We were employed by Mr. Dunn, the former Controller, and I presume we had charge of the case. They were originally commenced by another firm.

Q. Were you consulted about these settlements? Did you know of them before they occurred? A. Well, I did not know about the details of them. I knew that they were in process of a settlement, but I did not bother myself about them because Mr. Langhorne had charge of them. But I knew they were all settled except Quackenbush, and Mr. Langhorne and I got after him several times, because we were personally acquainted with him and he was a pretty hard man to get money out of. So we went after him and finally got that money out of him.

Cross-Examination.

MR. STONE: Are you sure, Mr. Miller, that you are on record as attorney or counsel in either of those cases? A. No; as I say, I am not sure of it. The cases were commenced by Flournoy & Mhoon as attorneys of record, and then when Mr. Dunn came in he turned the

cases over to us to manage; and whether we were the attorneys of record or not, I do not know, for I have never examined to see. Mr. Langhorne had charge of it, and I never bothered myself about it.

Q. Do you know when the matter was finally settled and the whole business closed up? A. Yes. The last money was paid November 25, 1892, by Mr. Quackenbush—\$1,120.

Q. Pardon me, but when were the cases finally dismissed and the proceedings closed in Court, in pursuance of the Act of the Legislature? A. The records will show that, Mr. Stone.

Q. Did you not look at the records for that, the same as you did for the other matter? A. Yes; but it was of no particular importance to me, and I did not pay any attention to it. I saw the dismissals there, and they are on file there and will show for themselves.

Q. Was this of any particular importance to you: the matter that you did refer to? A. Simply because the Controller had written to me and asked me for that data, and that is all I did.

Q. But he did not ask you when that matter had been closed? A. No, not at all. It was a telegram, simply saying: Send me the amounts and the dates when they were paid.

Q. Have you the letter of the Controller? A. It was a telegram.

Q. Have you that telegram? A. I do not know whether I have it here or not. If I have not, it is at my office—yes, I have it here.

Q. Have you any letter or any telegram from the Chairman of the Ways and Means Committee? A. No; I have not.

Q. By what means did you happen to find out that the Chairman of the committee desired anything of the kind? Well, I was in Sacramento in behalf of our bill there before the committee, and they wanted to know, before they passed on the bill, what had become of the money, and then they wanted to know the amounts and the dates; and I told the Chairman of the committee that I could not give them until I came back to San Francisco; and then when I came back to San Francisco I had considerable trouble in getting the amounts and dates, and before I could get them, why I received this telegram to hurry up, that the committee wanted it. I then finally got the records here and got it from the record.

Q. Did you get anything from this telegram that indicated that the committee were in a hurry for it, or wanted it? A. That is all I got.

Q. This says, "Hurry up; Chairman Mathews introduced his resolution yesterday. E. P. Colgan, Controller." There was nothing there to indicate that— A. No; but I knew what it was, because I had a consultation with the Controller, and he had asked me to get the data.

Q. Have you had a consultation with any member of this committee? A. No, sir.

Q. Not at all? A. No; I have not seen any of them since that time I was in Sacramento.

Q. Did you have any conversation with them up there, during the time you were before the Ways and Means Committee, about this? A. I had that conversation which I have just detailed with the Chairman, and that was a casual conversation on the floor of the House, and it only lasted a few minutes, and he said that nothing could be done until I furnished him with the dates and amounts. And I told him I would have to go to San Francisco to get them, and then I came to San Francisco that day and did what I stated

Q. This entire proceeding and the collections of the different amounts of money were all made under the one Act of the Legislature, as you understand it, were they not, Mr. Miller? A. Yes; as I understand.

Q. Mr. Miller, you have put in a bill for \$3,000 for your services, have you not? A. No, sir; I have not put in any bill. The firm of Langhorne & Miller put in a bill.

Q. I suppose you are of the firm of Langhorne & Miller? A. Yes.

Q. Then, necessarily, you put in a bill? A. As one of the firm; yes.

Q. Now, has there been any doubt in your mind as to where that money belonged—in what fund? A. There has never been any doubt in my mind.

Q. What is the condition of your mind in that particular? A. I have always considered it went to the Harbor Commissioners' Fund, and so expressed myself.

Q. How is it that you and Mr. Langhorne differ on that subject? A. We have not talked about it.

Q. Have not mentioned where it should go? A. Well, not specially that. We were talking about the whole case generally, and I never bothered myself about what fund it went into.

Q. What caused you to form an opinion, then, that it should have gone into the Harbor Commissioners' Fund? A. For the reason that those moneys were collected on account of moneys that had been embezzled which belonged to the Harbor Commissioners' Fund, and I consider that, after they have been collected, they should go back to the Harbor Commissioners' Fund.

Q. Did you look up any law on the subject? A. No.

Q. Never talked with Mr. Langhorne on the subject? A. Well, I have talked with Mr. Langhorne. I do not recall any particular conversation any further than we had a little conversation just before I came in here in regard to that. But as to where those moneys went, we did not bother ourselves with it at all. We did not consider that it was any of our business where the moneys went.

Q. What I am getting at is this, Mr. Miller: You say it should go into the Harbor Commissioners' Fund. Are you aware of the fact that your partner says it should go into the General Fund of the State Treasury? A. I saw from the papers that he had testified that, until Judge Levy decided it should go into the Harbor Fund, he was of the opinion that it should go into the General Fund.

Q. Then there was a difference of opinion between the two partners as to where it should go? A. There never was any difference of opinion between us, because the matter never came up.

Q. There is a difference of opinion now, is there not?

THE CHAIRMAN: I would like to ask what all this amounts to.

MR. STONE: It is a part of the theory of this case that there was so much dispute as to where it should go, that it was best to wait until it was all closed up.

THE CHAIRMAN: That is not the view the committee take of it.

MR. STONE: It is unfortunately the view that the defense takes of it.

THE CHAIRMAN: We want to know now, whether that money was paid in to Mr. Hart, and if he got it, did he keep it any length of time out of the treasury. And as to what fund it belonged to, it is not a part of our business to inquire into. We want to find out whether he got the money, and whether he kept it out.

MR. STONE: I suppose we can offer no excuse for keeping it out?

THE CHAIRMAN: Then it is his place to show why and by what authority he kept it out.

MR. STONE: Then this committee does not desire or care to know why?

THE CHAIRMAN: We want to know if he got it.

MR. STONE: But I mean the committee does not care for any explanation from anybody else.

THE CHAIRMAN: Well, not people's opinions on the subject—ex parte opinions. We do not care about that. We want to know why it was not put into the State Treasury.

MR. STONE: That is the point. Suppose it did not belong in the State Treasury.

THE CHAIRMAN: You can show that later on.

MR. DEVLIN: This money belonged to the State Treasury, no matter what fund it belonged to.

MR. STONE: The Court has decided, and it is in evidence, that it was not Mr. Hart's duty to do so.

THE CHAIRMAN: Has it not gone into the State Treasury?

MR. STONE: Not at all.

THE CHAIRMAN: Where has it gone?

MR. STONE: In the Harbor Commissioners' Fund.

MR. BUDD: The letters in evidence show that it was to be held subject to future litigation.

THE CHAIRMAN: It was agreed yesterday that you would furnish us some evidence as to this matter. The witness has stated that \$6,601 56 was paid on the 31st day of August, 1891. Yesterday it was stated, and I believe it was submitted as a part of your showing, that that \$6,601 56 and also the \$1,120 were paid in sometime in February of this year?

MR. BUDD: No, sir. The cases were settled in February.

THE CHAIRMAN: As I recall it, there was a question as to whether that \$6,601 56 was paid in August of 1891 or paid in February of this year.

MR. DEVLIN: They promised to furnish the committee this morning with the items and a statement of the various amounts stated in these settlements, and the dates when they were received.

MR. BUDD: We understand this gentleman has examined the record, and the records are here. We expect we could get it from the record. There was a question as to whether the \$1,120 was paid in October, 1892, or November, 1892, and we found that was a misprint. We then put in the complaint of General Hart and the findings of Judge Levy. Now, you gentlemen have got this witness on the stand, and he has given you his investigation of the record, just the same as we would have to do.

THE CHAIRMAN: Well, as I say, we do not want his opinion as to what fund the money should go into.

MR. STONE: We were simply following the course laid down yesterday.

THE CHAIRMAN: Well, that was not the proper course, if we allowed it.

MR. STONE: You allowed it.

THE CHAIRMAN: Well, we strike it out, if it was allowed.

MR. BUDD: I insist that it shall remain in the report, if it is in.

MR. STONE: Your firm put in a bill against the State, did it not, for \$3,000? A. Yes, sir.

Q. Why did you put it in against the State, if the money belonged to the Harbor Fund?

MR. DEVLIN: I object to that as immaterial.

THE CHAIRMAN: Let him answer the question. We want to get at the facts without surplusage of words.

MR. STONE: What was your reason, Mr. Miller, for putting in a bill against the General Fund for \$3,000 if the money in your opinion belonged to the Harbor Commissioners? A. Because the State was responsible for our fee, whether it went into the General Fund or whether it went into the Harbor Fund. We had collected moneys before in the Immigration case and collected \$20,000 and turned it into the treasury. That went into the Immigration Fund, but the State paid our bill just the same.

Q. And do you expect the State now to pay that bill? A. I hope so.

Q. The State itself? A. That is what we put the bill in for. I do not know whether they are going to do it or not, but that is what we put it in for—to get the money on it.

J. S. EMERY.

Sworn.

MR. DEVLIN: Mr. Emery, you were one of the defendants in the case of People vs. Wm. Knight? A. I was on Mr. Knight's bond.

Q. Did you pay any portion of the judgment, or any portion of the compromise? A. I do not know whether I did or not. I let Mr. Knight have some money.

Q. Well, did you pay any portion to General Hart, is what I am getting at? A. No, sir; I did not pay any money to Mr. Hart.

W. H. KNIGHT.

Sworn.

MR. DEVLIN: Mr. Knight, you were one of the defendants in the case of The People vs. W. H. Knight? A. Yes.

Q. And formerly was Harbor Commissioner of this State? A. Yes.

Q. Did you make any settlement in that suit with the Attorney-General, W. H. H. Hart? A. I did, sir.

Q. What settlement did you make with him? A. I paid him a certificate of deposit on the 24th of October for \$2,404 36, I think.

Q. October 24th? A. Yes.

MR. STONE: Pardon me; what year? A. 1892.

MR. DEVLIN: Drawn on what bank? A. Drawn on a deposit with the People's Home Savings Bank.

Q. Did you pay him any other sum? A. I did not.

Q. Do you know anything about these other defendants—whether they paid him or not? A. I do not.

Q. That was in full settlement of the liability of that case, was it? A. It was; yes.

Q. Where did you pay him the money? A. I paid him at his office.

Q. In this city? A. In this city.

Q. In the City and County of San Francisco? A. Yes, sir.
Q. Was the certificate of deposit made payable to you? A. No, sir. It was made payable to W. H. H. Hart, Attorney-General.

Q. On the face of the certificate? A. Yes, sir.

MR. STONE: Mr. Knight, did you ever pay him any other money individually? A. I did not, sir.

Q. That covers all the monetary transactions you had with him? A. Every cent; yes.

THE CHAIRMAN: Has that certificate come back into your hands? A. It has not.

MR. DEVLIN: The bank holds that. We want to get the teller of the Home Savings Bank to find out when that certificate was paid. I have written out a list of the witnesses, but perhaps we can avoid all this if Mr. Hart will take the stand.

MR. STONE: Put on your witnesses.

MR. DEVLIN: If Mr. Hart will go on the stand we can ask him as to the times when these particular amounts were paid, and how they were paid. Otherwise it will necessitate the subpœnaing of several witnesses.

MR. STONE: Mr. Hart will decline until his side of the case comes.

MR. BUDD: The Chairman stated that he did not care into which fund this money should go, or where it should go. We would like to have the Chairman read over the findings of the Ways and Means Committee, the second finding from the last: "That by the action of this Assembly, and a formal demand made by the Controller, said W. H. H. Hart was apprised of his dereliction of duty, and notified to pay into the State Treasury the amount of money now in his possession which belongs to the State, but has refused to comply with the demand, and is therefore guilty of official misconduct and misdemeanor in office."

THE CHAIRMAN: We consider that all these moneys—Harbor Commissioner moneys, and all other moneys—should be in the State Treasury. And if this money was collected, it should have been deposited there for security.

MR. BUDD: Does the Chairman know of any law that requires him to deposit it there?

THE CHAIRMAN: We are under the impression that there are laws; and if there are none, we will try and enact one up there this session.

The committee here took a recess until 1:30 o'clock P. M.

AFTERNOON SESSION.

S. T. ALLEN.

Sworn.

MR. DEVLIN: You reside in San Francisco? A. Yes, sir.

Q. What official position do you hold there? A. Deputy Clerk.

Q. What papers have you before you? A. People against Knight, also against Blanding and Phillips.

Q. Papers on file in the Clerk's office? A. Yes, sir.

Q. And suits brought in the Superior Court of the City and County of San Francisco? A. Yes.

Q. What I want to get—perhaps you can turn to them easily—is,

showing the amounts paid to the Attorney-General and the dates? A. Here is People against Wm. H. Knight.

Q. This is the case of The People against William H. Knight. This is the judgment roll, I suppose? A. Yes.

Q. Turn to the others also?

MR. STONE: I suggest that the records in each of those cases be introduced in evidence. They tell the story.

MR. DEVLIN: I simply want to get the particular matter that we refer to.

MR. STONE: We want the whole of it in.

MR. DEVLIN: Well, I will put the whole in. I simply want to call attention to a few things in the way of notes, but I will introduce the whole paper in evidence. I introduce in evidence the judgment roll in the case of The People of the State of California upon the relation of John P. Dunn, Controller of the State of California, plaintiff, vs. Wm. A. Phillips, Wm. T. Garratt, and Moses Heller in the Superior Court of the State of California in and for the County of San Francisco. Judgment roll marked filed February 11, 1893. I want the reporter to note down for the information of the committee the following facts which appear in stipulation on file.

MR. DEVLIN read as follows:

[TITLE OF COURT AND CAUSE.]

Whereas, Annie G. Garrett, executrix of the last will and testament of W. T. Garratt, deceased, and Martin Heller and Emily Heller, executors of the last will of Moses Heller, deceased, have been substituted as parties defendants in the above entitled action in the place of said defendants Garratt and Heller, respectively; and whereas, said defendants have paid to Wm. H. H. Hart, as Attorney-General of the State of California, the sum of \$7,725 82, being the proportion of said defendants due upon the bond set forth in said complaint, in full settlement of the above entitled action upon the bond and undertaking therein mentioned and described; and whereas, the undersigned has investigated the facts and circumstances relating to the cause of action set forth in the complaint herein, and from such investigation, and in accordance with the discretion given to me by law, I do hereby accept said sum by way of compromise in full settlement of all obligations on the bond of the defendants set forth in said complaint, and hereby dismiss the above entitled action, and direct the Clerk to enter judgment accordingly.

This stipulation is not intended to affect or waive the right of any cause of action in favor of the plaintiff involved in any other suit or suits against either or any of the defendants herein, or against any other person or persons.

July 25, 1891. In duplicate.

WM. H. H. HART,
Attorney-General of California.

Indorsed: Filed August 20, 1891. William J. Blattner, Clerk. E. R. Butler, Deputy Clerk.

MR. STONE: I would like to ask the committee at this point if there is any question as to the matter of dereliction of duty concerning the amount that should have been received?

THE CHAIRMAN: Do you see anything of that kind in the Journal?

MR. BUDD: What Journal?

THE CHAIRMAN: That one you have there.

MR. BUDD: But the committee has found that it was received in satisfaction of judgment.

THE CHAIRMAN: Did he receive any money at all?

MR. BUDD: Yes; but not in satisfaction of any judgment at all. If you are going to bind yourselves down to the Journal, you can only bind yourselves to money received in satisfaction of judgment.

MR. DEVLIN: The judgment was entered on the 10th day of February, 1893. I suppose you want that in full. I simply want the date. I will introduce the whole thing in evidence.

FEBRUARY 10, 1893.

[TITLE OF COURT AND CAUSE.]

In this cause, in reading the stipulation and dismissal of action herein filed on the 20th day of August, 1891, now in open Court, on motion of Louis H. Sharp, Esq., attorney for defendant, Annie G. Garratt, executrix of the will and estate of William T. Garratt, deceased, Arthur Rodgers, Esq., attorney for defendants, Martin Heller and Emily Heller, the Court orders that this action be and the same is hereby dismissed as to said defendants, Annie G. Garratt, executrix of the last will and testament of W. T. Garratt, deceased, and Martin Heller and Emily Heller, executors of the last will of Moses Heller, deceased;

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that the People of the State of California, upon the relation of John P. Dunn, Auditor, plaintiff, do take nothing by this action as against the defendants, Annie G. Garratt, executrix of the last will and testament of William T. Garratt, deceased, and Martin Heller and Emily Heller, executors of the last will of Moses Heller, deceased, but that this action be and the same is hereby dismissed as to the said defendants hereinbefore named, and that they go hence without date.

Judgment recorded February 10, 1893, in Judgment Book 18, page 146.

Indorsed: Filed February 10, 1893. M. C. Haley, Clerk. By W. C. Fitzgerald, Deputy Clerk.

I also introduce in evidence the judgment roll in the case of the People of the State of California upon the relation of John P. Dunn, Controller of the State, plaintiff, vs. Wm. H. Knight, F. S. Wensinger, J. S. Emery, J. N. Knowles, J. Birmingham, W. Witzemann, Alexander Badlam, Moses Heller.

Indorsed: Filed October 29, 1892. William J. Blattner, Clerk. By J. J. Gray, Deputy Clerk.

I will ask that the following be recorded upon the minutes, which appears upon the judgment roll:

[TITLE OF COURT AND CAUSE.]

Whereas, the Legislature of the State of California did enact a certain statute entitled an "Act authorizing the Attorney-General to dismiss those certain actions pending in the Superior Court of the City and County of San Francisco, and numbered 11,706, 11,925, 11,926, upon

payment to him for the use of the State of certain moneys," approved March 31, A. D. 1891, wherein and whereby it is provided that the Attorney-General is hereby authorized in his discretion to dismiss those certain actions now pending in the Superior Court of the City and County of San Francisco, State of California, wherein the People of the State of California are parties plaintiff, and W. A. Phillips and others are parties defendants, number 11,706, and William H. Knight and others are parties defendants, 11,925, and Wm. Blanding and others are parties defendants, number 11,926, upon the payment to him for the use of the State of such amounts as by the cash books kept by the Secretary of the Board of State Harbor Commissioners appear to have come into possession of said Board, and which have not been paid into the State Treasury, or to dismiss the same in his discretion as to any defendant therein, upon the payment by such defendant of his just proportion of said amount; and whereas, the defendant, Wm. H. Knight, entered upon the discharge of the duties of State Harbor Commissioner on November 23, 1882, and continued charged with the execution and performance of the duties thereof down to and including the 20th day of March, 1883; and whereas, the following is a correct statement of account of all moneys appearing from the cash book kept by the Secretary of said Board of State Harbor Commissioners, to have come into the possession of the said Board of Harbor Commissioners, and the action of money paid over to the State Treasurer of the State of California during said time:

Cash on hand November 23, 1882.....	\$11,861 53
Total receipts from November 23 to March 28, 1883, pp. 208 to 286 inclusive, Cash Book.....	188,606 62
	<u>\$200,468 15</u>
Disbursements, not including amounts paid into the State Treasury, pp. 203 to 283.....	\$122,251 16
To this should be added cash on hand at time of remittance of the \$21,963 38..	13,998 40
Also paid into State Treasury, viz.: January 10.....	17,995 44
February 9.....	18,404 00
Shipped from San Francisco March 8th to 15th, and entered on Treasurer's books April 6th.....	15,707 18
March 24, cash to successors in office, voucher 4,106, p. 296, Cash Book.....	5,995 15
March 26, same.....	1,355 10
	<u>\$195,705 43</u>
Balance	\$4,762 72

Of this amount Mr. Knight should pay one half, \$2,381 36, and costs advanced in cash by State, \$23; total \$2,404 36.

And whereas, it appearing to me that the just proportion of said defendants of the amounts appearing to have come into the possession of the Secretary of said Board, and which have not been paid into the State Treasury, is said sum of \$2,381 36 and costs advanced by the State, \$23, making a total of \$2,404 36; and whereas, each of the defendants in the above entitled action has paid his just proportion, aggregating said \$2,404 36, of such amounts as by the cash books kept by the Secretary of the State Board of Harbor Commissioners appear to have come into the possession of said Board, and which have not been paid into the State Treasury, to Wm. H. H. Hart, Attorney-General of the State of California, for the use of said State of California, receipt whereof, for the use aforesaid, is by said Attorney-General hereby acknowledged;

Now, therefore, said Wm. H. H. Hart, Attorney-General of the State of California, pursuant to the terms of said Act of the Legislature, has and he does hereby dismiss the above entitled action as to each and all of the defendants in the above entitled action without prejudice to any other suit pending.

WILLIAM H. H. HART,
Attorney-General and Attorney for Plaintiff.
WILLIAM J. BLATTNER, Clerk.
By FRANK RYAN, Deputy Clerk.

San Francisco, October 25, 1892.

And also the following judgment:

[TITLE OF COURT AND CAUSE.]

In open Court, October 25, 1892. No. 11,925.

In this cause, upon reading and filing the dismissal of action in open Court and upon motion of W. H. H. Hart, Esq., attorney for plaintiff, it is ordered that this action be and the same is hereby dismissed, without prejudice to any other suit pending.

Wherefore, by virtue of law and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that the People of the State of California, upon the relation of John P. Dunn, Controller of the State, plaintiff, do take nothing by this its said action, as against W. H. Knight and others, defendants, but that judgment of dismissal be and the same is hereby entered, without prejudice to any other suit pending.

Recorded October 29, 1892. V. 4, Department 1, page 525.

Then, in red ink, correction made by order of Court:

Made to February 15, 1893, nunc pro tunc of October 25, 1892.

M. C. HALEY, Clerk.
By J. B. MARTIN, Deputy Clerk.

Indorsed: Filed October 29, 1892.

WILLIAM J. BLATTNER, Clerk.
By J. J. GRAY, Deputy Clerk.

MR. BUDD: It does not appear to the committee what those corrections were in red ink.

MR. DEVLIN: The correction referred to being these words, entered in red ink: "To any other suit pending."

MR. BUDD: In two places?

MR. DEVLIN: Yes, in two places. We also introduce in evidence the judgment roll in the case of The People of the State of California, upon the relation of John P. Dunn, Controller of the State, plaintiff, vs. Wm. Blanding, John Center, Wm. M. Lent, Thos. M. Quackenbush, S. Clinton Hastings, H. H. Toland, Albert Dibble, Samuel Crim, and Peter Donahue. In the Superior Court of the State of California, in and for the county of San Francisco. No. of judgment, 11,926. I desire to spread upon the minutes of the reporter the following stipulation:

[TITLE OF COURT AND CAUSE.]

The above entitled action having been settled and compromised under the provisions of Chapter 188, Statutes of 1891, page 268, the above entitled action is hereby dismissed as to the defendants Wm.

Blanding, and Thomas M. Quackenbush, and all defendants in said action, and the Clerk is hereby directed to enter up his judgment of dismissal.

San Francisco, February 3, 1893.

Wm. H. H. HART,
Attorney-General of the State of California,
Attorney for Plaintiff.

Indorsed: Filed February 7, 1893.

M. C. HALEY, Clerk.
By JOSEPH I. TOOHIG, Deputy Clerk.

And also the following judgment:

[TITLE OF COURT AND CAUSE.]

In open Court, February 7, 1893. No. 11,926.

In this action, upon motion of W. H. H. Hart, Esq., Attorney-General of the State of California, attorney for plaintiff herein, and the Court being fully advised in the premises therein, it is by the Court ordered that the plaintiff herein take nothing by this, its said action, and that the said action be and the same is hereby dismissed as to the defendants Wm. Blanding, Thos. M. Quackenbush, and all the defendants in said action.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that the People of the State of California, upon the relation of John P. Dunn, Controller of the State, plaintiff, do take nothing by this, their said action, as against William Blanding and Thomas M. Quackenbush, defendants, and all defendants in said action, but that a judgment of dismissal be and the same is hereby entered herein, in favor of said defendants and against said plaintiff.

Judgment of dismissal recorded February 19, 1893, B. 18, p. 142.

Indorsed: Filed February 9, 1893.

M. C. HALEY, Clerk.
By W. J. FITZGERALD, Deputy Clerk.

And also the following stipulation:

[TITLE OF COURT AND CAUSE]—*People vs. Blanding.*

Whereas, the Legislature of the State of California did enact a certain statute, entitled "An Act authorizing the Attorney-General to dismiss those certain actions pending in the Superior Court of the City and County of San Francisco, and numbered 11,706, 11,925, and 11,926, upon payment to him, for the use of the State, of certain moneys," approved March 31, A. D. 1891, wherein and whereby it is provided that the Attorney-General is hereby authorized, in his discretion, to dismiss those certain actions now pending in the Superior Court of the City and County of San Francisco, State of California, wherein The People of the State of California are parties plaintiff, and W. A. Phillips and others are parties defendant, numbered 11,706, and William H. Knight and others are parties defendants, numbered 11,925, and William Blanding and others are parties defendants, numbered 11,926, upon

the payment to him, for the use of the State, of such amounts as by the cash books kept by the Secretary of the Board of State Harbor Commissioners appear to have come into possession of said Board, and which have not been paid into the State Treasury, or to dismiss the same in his discretion as to any defendant therein upon payment by such defendant of his just proportion of such amounts; and whereas, William M. Lent, John Center, and Albert Dibble, defendants in the above entitled action; Maria L. Crim and George S. Crim, executrix and executor of the last will of Samuel Crim, one of the defendants in said action, who has deceased since the commencement of said action, and Annie Donahue and Mary Ellen Von Schroeder, executrices of the last will of Peter Donahue, deceased, who departed this life since the commencement of said action, who has paid his just proportion of said amounts, as by the cash book kept by the Secretary of the State Harbor Commissioners appear to have come into the possession of said Board, and which have not been paid into the State Treasury, to William H. H. Hart, Attorney-General of the State of California, for the use of said State of California, receipt whereof, for the use aforesaid, is by the said Attorney-General hereby acknowledged;

Now, therefore, said Wm. H. H. Hart, Attorney-General of the State of California, pursuant to the terms of the said Act of the Legislature, has and he does hereby dismiss the above entitled action as to said defendants Wm. M. Lent, John Center, Albert Dibble, Samuel Crim, and Maria L. Crim and Geo. S. Crim, executrix and executor of the last will of Samuel Crim, deceased, and Annie Donahue and Mary Ellen Von Schroeder, executrices of the last will of Peter Donahue, deceased, who departed this life since the commencement of this action, without costs. And the Clerk of said Court is hereby authorized and directed to enter judgment of dismissal pursuant to the terms of this stipulation.

This stipulation is not intended to affect or waive the right of any cause of action in favor of the plaintiff involved in any other suit, or any claim plaintiff now or ever had against said defendant Thos. M. Quackenbush in the above entitled action, the same not being dismissed as to him and the defendant Blanding.

(Indorsed:) Filed August 1, 1891.

W. H. H. HART,
Attorney-General of California.

San Francisco, Cal., August 1, 1891.

WM. J. BLATTNER, Clerk.
By H. F. MORRIS, Deputy Clerk.

In accordance with that stipulation was entered the following judgment:

[TITLE OF COURT AND CAUSE.]

August 1, A. D. 1891. Numbered 11,926. In this cause, upon filing the dismissal of action as to certain defendants and application of Messrs. Pillsbury & Blanding, attorneys for said defendants, to the Clerk, judgment of dismissal as to said defendants is hereby entered herein.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged, and decreed, that the People of the State of

California, upon the relation of John P. Dunn, Controller of State, plaintiff, do take nothing by this their said action as against Wm. M. Lent, John Center, Albert Dibble, Samuel Crim, and Maria L. Crim and George S. Crim, executrix and executors of the last will of said Samuel Crim, deceased, and Annie Donahue and Mary Ellen Von Schroeder, executrices of the last will of Peter Donahue, deceased, defendants, but that judgment of dismissal as to said defendants be, and the same is hereby entered herein.

Judgment recorded August 3, 1891. B. 9, p. 441.

(Indorsed:) Filed August 3, 1891.

WM. J. BLATTNER, Clerk.
By A. J. EVANS, Deputy Clerk.

GENERAL BARNES: That stipulation is in the same case as the stipulation which you read as to Mr. Quackenbush?

MR. DEVLIN: Yes. That, as I understand, includes all the stipulations.

E. S. HELLER.

Sworn.

MR. DEVLIN: Your name is E. S. Heller? A. Yes, sir.

Q. You were one of the attorneys in the case of People vs. William Blanding and others; Judgment No. 11,826? A. No; not in the Blanding case.

Q. Or in the case of The People vs. William A. Phillips? A. In the Phillips and Knight cases.

Q. Did you ever have anything to do with the payment to the Attorney-General of the amounts paid in compromise of the Phillips case? A. Yes, sir.

Q. Did you tender the payment yourself? A. I believe that Mr. Arthur Rodgers and myself did.

Q. How much did you pay the Attorney-General? Do you remember? No; I do not remember the exact figures.

Q. In what form did you pay him? A. It was paid in money, I think, and some of it in checks; I am not sure of that either. It was a matter of a year and a half ago.

Q. Have you got any way of telling how it was paid? Can you tell by the check when it was returned to you? A. No; it was not my check.

Q. What check was it? A. It was the check of Martin Heller, probably, or the check of M. Heller & Sons, if there was a check. That I do not remember.

Q. Do you know that a portion of it was paid in coin? A. Yes; I think there was some money paid.

Q. Do you know how much? A. No; I do not know that.

Q. Have you got any way of telling, any record or memorandum in your office, as to how it was paid? A. No; nothing except the receipt, which is in the form of a dismissal.

Q. Have you got any way of telling in what form the amount of money was paid to the Attorney-General? A. No; I think not, Mr. Devlin. The dismissal shows the amount, and that was the amount that was paid.

Q. Were you present when it was paid? A. I think so; yes.

Q. Where was it paid? A. It was paid in General Hart's office.

Q. In the City and County of San Francisco? A. Yes.

Q. Where can we find Martin Heller? A. He is at 112 Sansome Street.

Q. Mr. Rodgers, you say, was with you at this time, when this payment was made? A. Yes.

Cross-Examination.

MR. STONE: Mr. Heller, you called on the Attorney-General a great many times, did you not, about this matter? A. Yes, several times.

Q. How many times should you think, before you could finally close it up, commencing about when and ending when? A. Oh, I think I bothered the Attorney-General more than anybody else. I must have called on him twenty-five or thirty times, I think.

Q. And each time you had a conference regarding the bringing of this thing to a settlement, did you? A. Yes.

Q. When was the first time that you called, if you remember? A. That I do not remember. Mr. Rodgers and myself used to call at different times. I think Mr. Rodgers probably called on General Hart last. But what the last time was that I called, I could not tell you. I could not tell you within six months.

Q. It was as late, was it not, as last October? A. Oh, yes, I think so.

Q. And did you have any correspondence with the Attorney-General regarding the matter? A. I think so, yes. Most of the correspondence, however, was oral communications, in his office. I may have written a letter or two, and may have received one or two.

Q. About how many letters did you get from the Attorney-General on this subject of closing up this matter? A. I may have received one or two—that is, that I could put my hand on. I was subpoenaed to bring them in Judge Levy's Court last week, but I only found one.

Q. But what we want to get at and show to the committee is, that during a long period of time and up to last October, you were in almost constant communication with the Attorney-General regarding the final closing up of this matter, were you not, of these cases? A. Yes; I was in constant communication up to a certain date—whether it was last October or later, I would not say.

Q. It was at least up to last October? A. Yes; I think so.

Q. Can you find those letters, Mr. Heller? A. Letters that I received?

Q. Yes. A. I can find the letter that I received, yes—letter or letters.

Q. Have you it with you? A. No; I have not.

Q. If it is not too much trouble I wish you would get it here so we could have it. You can send it out. A. Yes. I think that in my search for letters, when I received the subpoena duces tecum, I only found one letter that General Hart sent me. Now, it may be that I lost or misplaced some.

Q. Will you be kind enough to bring that with you? A. Certainly.

MR. DEVLIN: I want to ask you, Mr. Heller, was the suit settled in July, 1891, so far as the payment of money was concerned? A. Yes, sir—that is, the Phillips case.

Q. And the only communications you had were with reference to the other two defendants? A. With reference to the Knight case.

Q. So far as the suit of the people against William A. Phillips, Moses

Heller, and W. T. Garratt was concerned, that was finally settled, was it not, on July 25th, or about that time, 1891? A. Yes.

Q. And did you have any communication in regard to that case with the Attorney-General after that time? A. I think not; yes, there was one—there was just one matter that the Attorney-General spoke to me about, in regard to the moneys that he received. He told me—in fact, I spoke to him about it once or twice—he was not certain as to whom he should pay the money. That was about the only talk there was in regard to the Phillips case after it was settled.

MR. STONE: Then, as a matter of fact, there was a discussion between you, as one of the attorneys, and himself, as to where he should put that money? A. Oh, yes.

Q. How many times was that discussed between you, should you think? A. Well, I do not know. I think the matter may have been discussed two or three times, but it was a matter in which I was not particularly interested, and I did not bring it up for discussion.

Q. Yes, but during that time he asked you your judgment as to where the money should be placed, did he not? A. Yes, sir, I think so. And I think at one time we read over the statutes together in his office.

Q. What did you tell him then? A. Well, I believe I told I did not know.

MR. BUDD: It was a pretty hard question for anybody to determine, was it not? A. Well, I do not know.

MR. STONE: It was for you, at least—— A. Yes, it was for me.

WILLIAM MCGAVIN.

Sworn.

MR. DEVLIN: What is your occupation, Mr. McGavin? A. Accountant in the Nevada Bank.

Q. In the City and County of San Francisco? A. Yes.

Q. And you have been such how long? A. Three years.

Q. As such, have charge of the books of the bank showing the accounts of depositors? A. No; I have not myself individually. I have charge of the bank.

Q. Who has charge of the ledger account, showing the deposits of depositors in the bank? A. Well, there are several.

Q. Of the one containing Mr. Hart's account? A. I think Mr. A. J. Block. I would not be positive. There are four of them, and they run by letters.

Q. Mr. Block, and who are the others? A. Mr. J. Kavanaugh, W. Ames, and Mr. Cook.

Q. What are Mr. Cook's initials? A. I cannot tell you that.

Q. You have not, then, the ledger account containing the bank deposit account of Mr. Hart? A. No; I have not that ledger. I have the journal.

Q. Have you the certificate of deposit which was issued to Mr. Hart? A. Yes, sir; I have it right here.

Q. Will you produce it? [Witness does so.]

Q. Were you present when the money or property was deposited that secured the certificate? A. Yes, I was.

Q. Who made the deposit? A. Well, of course, all certificates so deposited emanate from the receiving teller.

Q. Well, who is he? A. Mr. Brooks is his name. But this certificate is written by another young gentleman—G. L. Woolrich.

Q. What I want to get at, Mr. McGavin, is the man who took the money from the person who received that certificate of deposit. What is his name? A. Brooks.

Q. Mr. Brooks? A. Yes.

Q. Do you know anything about it personally? A. I saw it.

Q. You were present when that certificate was issued? A. I was present when the money was put on the table.

Q. Who was it put it on the table? A. Mr. Hart himself.

Q. Was there anybody with him? A. I do not think so.

Q. Are you sure whether there was any one with him or not? A. I would not be positive.

Q. What was the property; was it money? A. Money, yes.

Q. Gold coin? A. Some.

Q. What was the rest? A. Some currency.

Q. How much currency? A. I could not tell you.

Q. Well, have you got any idea? A. I have not. Several thousand dollars, I think.

Q. Several thousand dollars in currency? A. Yes. Of course it is not possible for us to pick out what kind of money was paid, because the coin, after the receiving teller balances his coin, is turned over to the paying teller and mixed up with other moneys.

Q. I want to know whether you recollect it or not? I will ask you again, do you recollect whether anybody was present with Mr. Hart or not when the certificate was issued? A. Not to my knowledge.

Q. Do you know whether or not Mr. Hart—you say he brought it in in coin and currency? A. Yes.

MR. STONE: Is that certificate attached to your book, sir? A. It is attached, yes.

MR. DEVLIN: Well, I might read it to the reporter, and introduce it in evidence, I suppose. You have no objection to that?

GENERAL BARNES: No, sir. On the contrary, we would like to have it read.

Mr. Devlin read as follows:

Certificate of deposit, not subject to check.

NEVADA BANK OF SAN FRANCISCO, }
\$17,847 $\frac{75}{100}$. SAN FRANCISCO, CAL., February 14, 1893. }

W. H. H. Hart, as Attorney-General of the State of California, has deposited in this bank seventeen thousand eight hundred and forty-seven $\frac{75}{100}$ dollars, payable to the order of himself, in United States gold coin, on the return of this certificate, duly indorsed.

HARRISON BROOKS, Teller.

J. F. BIGELOW, Vice-President.

Cashier scratched out. Then in the margin the number "555."

Indorsed: Payable to the State Board of Harbor Commissioners.
Wm. H. H. Hart, as Attorney-General of the State of California.

Below: J. J. Keegan, Secretary. Stamped: For deposit to the credit only, Board of State Harbor Commissioners, J. J. Keegan, Secretary. On the face of the certificate is stamped: Exchanged February 17, 1893, with other banks.

GENERAL BARNES: I suppose the indorsements on that certificate show that it has been paid, do they not? A. Yes.

Q. And the certificate has been paid? A. Yes, sir. That is the beginning and end of the whole thing, so far as the bank is concerned.

MR. DEVLIN: I want the Attorney-General's account for the last two years with the Nevada Bank. Mr. Hart will not go on the stand and tell me anything about it, so I have got to examine the witnesses.

MR. BUDD: I wish now to make an objection to this line of procedure. Mr. Devlin is representing this committee, and it is the fourth or fifth time that he has called attention to the fact that General Hart has not gone on the stand. General Barnes stated yesterday that at the proper time he would go on the stand if necessary.

THE WITNESS: It is not possible for the men to get away from the bank now. All the business comes in from two o'clock.

GENERAL BARNES: You want to know if that \$7,721 56 was paid in more than one amount, and the date when it was paid?

GENERAL BARNES: That we will give you.

THE CHAIRMAN: Yes.

THE CHAIRMAN: When was this money paid, as a matter of fact?

GENERAL BARNES: I have not got it in my hand here now. The largest part of it was paid in August, 1891, and the rest of it was paid in November, 1892. There is a little difference in there to the amount of four dollars, which covers a trifling amount that was paid out for a judgment.

MR. DEVLIN: We want to agree, gentlemen, to let the cashier send up a copy of that account, if there be any in the bank.

GENERAL BARNES: I do not see any objection to that.

MR. DEVLIN (to the witness): You may bring up a copy of General Hart's account. We do not want to go back too far—say, from July 1, 1891.

CHARLES A. SMITH.

Sworn.

MR. DEVLIN: Your name is Charles A. Smith? A. Yes.

Q. And your occupation is what? A. Accountant in the People's Home Savings Bank.

Q. In the City and County of San Francisco? A. Yes.

Q. And you have been such how long? A. Since the first of June last.

Q. Have you got in your possession a certificate of deposit, issued on or about the 24th day of October, 1892, payable to W. H. H. Hart, Attorney-General? A. Yes, sir.

Q. Let me see it. A. [Witness hands certificate to counsel.]

Q. Is this the certificate? A. Yes.

Q. Does that bear upon its face any marks showing the date of payment? A. Yes.

Q. What is it? A. There is a "paid" stamp there.

Q. That was the date it was paid? A. Yes, sir.

Q. That reads, "People's Home Savings Bank, paid November 14, 1892, by Exchange Teller." Is that the date on which this certificate of deposit was paid by the People's Home Savings Bank? A. Yes.

MR. DEVLIN: If there is no objection, I will read this in evidence:

Certificate of deposit, special, People's Home Savings Bank, No. 3634.

SAN FRANCISCO, October 24, 1892.

Cut figures: "2404," with star on each side. W. H. Knight has deposited in this bank two thousand four hundred and four $\frac{3}{100}$ dollars (\$2404 $\frac{3}{100}$), waiving any claims to dividends or interest thereon pursuant to the terms of a receipt heretofore given. In all other respects, including terms of payment upon return of this certificate properly indorsed, this deposit is to be subject to conditions of agreement between said bank and its depositors, payable to Hon. W. H. H. Hart, Attorney-General, or order.

J. E. FARNHAM, Cashier.
W. E. PALMER, Teller.

Bears neither interest nor dividend.

Indorsed: Wm. H. H. Hart, Attorney-General. Stamped on its face: People's Home Sav. Bank. Paid November 14, 1892, by Exchange Teller.

A. R. COTTON.

Sworn.

MR. DEVLIN: Your name is what, Judge? A. Aylett R. Cotton.

Q. You reside at San Francisco? A. I do.

Q. I am really not very familiar with the allegations in reference to this particular matter, but I understand that some allegation has been made in regard to some bills that you presented for services rendered to the Attorney-General. How long have you known W. H. H. Hart, Attorney-General? A. Well, I was asking the General the other day when he and I first became acquainted, and he thinks I was present when his guardian was appointed over him as a boy thirty odd years ago. I do not recall the circumstance. I suppose it was so. I have known him very intimately, though, for over twenty years.

Q. Where did you first know him, Judge? A. First, back in Iowa.

Q. How long did you know him back there? Were you and he together there? A. Never together, that is entirely.

Q. I mean in the same town. A. No, never lived in the same town.

Q. Same county? A. Lived in the same county.

Q. Did he study law in your office? A. He did not.

Q. Never in your office? A. Never. That is entirely false which was published in that respect in the "Chronicle."

Q. I want you to answer the questions, Judge. I do not suppose you are here answering newspaper comments.

THE CHAIRMAN: Let us understand. He is not contradicting things; we want it understood that he is not contradicting anything that this committee has said or anybody connected with it.

THE WITNESS: No.

MR. DEVLIN: I know nothing about the fact. I am simply asking to find out what you know. Now, we will dismiss anything else, Judge,

except as to the facts we have before the committee. How long was Mr. Hart in Iowa since you first knew him, before he came to California?

THE CHAIRMAN: If he desires to make any such contradiction in his own behalf, he will be permitted to do so.

GENERAL BARNES: We do not care about it.

MR. DEVLIN: How long have you been in California? A. Well, I have been in California this last time since 1883, but I happen to be a '49er—a pioneer.

Q. Were you and General Hart ever associated in business in California? A. We never have been in partnership. The General has had me participate in quite a number of cases of his.

Q. How did you come to locate in California the second time? A. Because I had been in California when I was a boy, a young man in '49 and '50, and I made up my mind that I would return to California again.

Q. Was it at the solicitation or request of General W. H. H. Hart? A. It was not. General Hart was not aware that I was coming to California when I came here, I do not think, at all.

Q. Where did you establish your office, with reference to General Hart's office, when you started out to practice law in California? A. On the same floor, and upon his suggestion that he would like to have me for a near neighbor as a lawyer.

Q. Your office and his open one into the other? A. They do not, but then they are on the same floor, in close proximity.

Q. Did they ever? A. No; they never did. But they are on the same floor.

Q. Did you ever use your libraries interchangeably? A. I have used his library. He has the library mainly.

Q. Did General Hart employ you, before he was elected Attorney-General, in cases frequently in which he was employed as attorney? A. Yes, sir; I assisted the General. He and I acted in concert in a good many cases since I have come to California.

Q. When you came here, the General had quite an extensive law business? A. Yes, sir; a very good law practice.

Q. Did you have any when you came here? A. I hadn't, because I landed down here without any office or practice. I had a very good practice back in Iowa.

Q. Can you state to the committee whether most of the business you have been engaged in, or not, has been that in which General Hart has asked you to assist him—before he was elected Attorney-General? A. Well, I can say there has been quite an amount of business that I have assisted in at the General's request.

Q. Well, all the volume of business that you have done since you have been in this State, up to the time General Hart was elected Attorney-General, was most of it business in which he had asked you to assist him, or was it business that you had obtained on your own account, and by virtue of your position as attorney? A. Well, I think, perhaps, the larger part consisted of cases of the General's. I attended to a great many cases in the Supreme Court for the General.

Q. Were you engaged in writing his briefs? A. I wrote a great many.

Q. Preparing pleadings? A. Yes. I was not in all the cases. We had no partnership.

Q. No; I understand exactly. A. But when he had a case that he desired me to participate in, I did so.

Q. I am getting at your business, Judge? A. Yes.

Q. Was most of the legal work that you did, since you came to California the second time, in cases in which General Hart was attorney, in which you examined authorities, gathered authorities and prepared briefs, prepared pleadings, and did generally what is known as office work? A. No, sir; where I prepared briefs and pleadings, I tried the case generally myself.

Q. Well, General Hart was interested in the cases, was he? A. Yes, sir. A great many times he hadn't time to attend to them himself. Many times. He had a good deal of faith, I think, in my ability to manage the cases, and I conducted the cases.

Q. Did you have many cases or much law business in which General Hart was not interested? A. Well, I will say that the larger part, I think, of the business that I transacted in California cases, were cases with which he was connected.

Q. Are you an intimate friend of W. H. H. Hart? A. Very intimate, indeed. I like the General very much, indeed. I think he is a very worthy man, indeed.

Q. And you have been associated with him in a great many legal cases? A. I have been.

Q. And business? A. Yes.

Q. Have you ever been associated with him in any business enterprises outside of law business? A. If you will name them—

Q. I do not know; I am asking you. I do not know what you are going to testify to at all. I have had no conversation with you on the subject and do not know what you are going to testify to. I am simply asking you for the benefit of the committee. A. I don't recall any particular business.

Q. Were you and the General ever interested in the purchase of land together, land speculation, railroad speculation, or other matter? A. Not that I recall.

Q. You remember the time that General Hart was projecting, not projecting, but working up the building of a railroad—another transcontinental railroad into California, either the Union Pacific or the Atlantic and Pacific? A. I remember at one time he was talking of that.

Q. You remember that he claimed that he discovered a new pass in the mountains which he named "Cotton's Trail?" A. I never heard of that.

Q. You never heard of that? A. No; I never heard of that. Not at all. I never heard of it. I should feel complimented, though, with having its name.

Q. I was informed that the General had a map prepared laying out a new pass, and he discovered a new pass and named it after Mr. Cotton? A. That is news to me.

Q. I just wanted to know if you were interested in that project at all? A. Was that in the "Chronicle," too, Mr. Devlin?

Q. Now, were you engaged with Mr. Hart during the time he was engaged in the trial and preparation of the Blythe cases? A. The Blythe case?

Q. Yes. A. Well, I do not know as it is any concern of this committee.

GENERAL BARNES: I do not make any objection.

THE WITNESS: I do not think the committee desire to know.

MR. DEVLIN: I do not ask you anything about your arrangement. I simply want to know if you worked on it? A. I do not think the committee care to know about the Blythe case.

GENERAL BARNES: Did you help him in the Blythe case? That is easily answered—yes or no? A. I do not think it is material to the inquiry.

THE CHAIRMAN: Yesterday I received from the Controller, at the request of the committee, a statement of certain expenses that had come up before the Ways and Means Committee, and we had some curiosity to know what the items of those were. I got it yesterday, and it is now in Mr. Devlin's possession, or yours, and your name figured in it very frequently; and I mentioned it there at Sacramento, and then General Barnes stated that they would like to go into this matter and explain your services. It has been charged that Mr. Hart has employed you as Assistant Attorney-General because of his previous friendly and business relations with you. Now that is the purpose of that inquiry.

MR. DEVLIN: These gentlemen requested me to examine Mr. Cotton upon that charge.

MR. BUDD: No, sir. The House requested the committee to investigate.

MR. DEVLIN: Now, I am taking this up seriati, and I am asking him with regard to his being an intimate friend and associate of General Hart.

MR. BUDD: He said he was.

MR. DEVLIN: I wanted to show that that particular portion of it was true. Now I am asking about the Blythe matter. My object was to show that that matter took a great deal of time; a great deal of work. I do not know whether he was employed or not. I am asking him a plain question, and I do not know whether he is going to answer yes or no.

THE WITNESS: Mr. Chairman, I would be pleased to explain these items.

MR. DEVLIN: Mr. Cotton, on February 25, 1891, there is a claim for attorneys' fees in *The State vs. The American Sugar Refinery Company*, \$20; will you please explain what that was for? A. I have got, Mr. Devlin, a memorandum of all the money I have had right from the beginning. If you will allow me I will go through it.

GENERAL BARNES: A chronological memorandum of your employment? A. Yes, sir; I have.

THE CHAIRMAN: Well, you may go ahead. A. Now, I will say, gentlemen of the committee, that January 27, 1891, there were two habeas corpus cases pending in the Supreme Court of the State. Mr. Hart had to be out of the city. One was the case of *Irvine*, reported in 88th Cal. 169; and one the case of *Williams*, 89 Cal. 421. I argued those cases orally in the Supreme Court. Mr. Carroll Cook was the attorney who appeared to have those petitioners discharged from the penitentiary. *Irvine* had been sentenced on a charge for grand larceny for nine years and burglary for five years, and he had made an escape and was resentence for nine for that reason. He claimed that the nine years should commence from the end of his first term—Mr. Cook did—and therefore he ought to be discharged. I argued that case, and he was remanded. The Supreme Court sustained my position—held that he should be remanded and serve his full time.

MR. KAHN: Was there anybody here at that time representing the Attorney-General? A. There was not. This was January 27, 1891, before the new deputies had been constituted.

GENERAL BARNES: And the Legislature was in session at that time, and Mr. Hart was in attendance upon the Legislature.

THE CHAIRMAN: If you got any fees, state what you got. A. Well, I got \$40 in each—\$80 for the two. Let me explain, gentlemen, the case of Williams. Williams had been committed for ten years for a charge of burglary. It did not appear upon the face of the commitment that he had been convicted for previous offenses, and Carroll Cook tried to discharge him on that ground. I went and hunted up the record and found these previous convictions and had Carroll Cook stipulate that the record showed that. I filed a brief and they remanded him. I wished to be gentle with my old friend Mr. Hart, and I put in a bill of \$40 in each case—\$80—which I was paid in February of that year. The next was the case of The People against the American Sugar Refinery Company, where there were bills brought against the State for over \$20,000 for expenses; \$5,000, I believe, for receiver, \$5,000 for attorneys, and a lot of other charges that were pretty large, per diem pretty large for several employes, and Mr. Hart told me that if I would go into that case thoroughly he would pay me \$250; and I did go into it, and examined all the records, and examined the more recent case of Have-meyer against the Superior Court—against Judge Wallace's Court—and I found a letter in his office yesterday that I wrote to him in regard to that case. I do not think it is best to take up time and give my views of it.

After I had examined both cases and examined the decisions, the Legislature passed a bill to pay those workmen—the workmen themselves—and having passed it, it in a measure took the case out of my hands and the General's hands, and we did not finally prosecute the bill, but I was to be paid \$250 to carry that matter through and take it to the Supreme Court and test the legality. The fact was that the Supreme Court decided that all that Judge Wallace did was in contempt of the Supreme Court and they fined him, if you remember, \$10 for the contempt—a nominal fine—and these costs were all made after that time and we thought they were unfair and should not be paid by the State. The State saw proper to pay the workmen and that virtually ended that. Now in March, 1891, there were three suits commenced by the South San Francisco and North Pacific Railway Company; one against the Supervisors of Marin County, one against the Supervisors of Sonoma County, and one against the Supervisors of Mendocino County, to compel the counties to take the railroad taxes without any interest. The Attorney-General employed me to look after those cases. I went to San Rafael on March 16th to attend the case on the day appointed, and when I arrived there I found that the Supervisors had resolved to take those taxes without interest. The case had been virtually ended. I went the week after to Santa Rosa and found they had decided to do the same thing there; found they had decided to do the same thing in Mendocino County; paid my own expenses in those three cases and charged \$300, which was paid me in April.

Q. \$100 apiece? A. \$100 apiece. Then in the matter of the four bills passed—one for the relief of Stephenson, one for the relief of Bourn, one for the relief of Lynch, and one for the relief of the Tia Juana flood

sufferers—the General requested my opinion in those cases, and I made a pretty thorough examination in regard to the cases, wrote an opinion, that I found in the Attorney-General's office and I have here now, that is appended to the request of the Controller of the State, and am happy to say that I concluded that the Stephenson bill was constitutional, that the others were not. And the Supreme Court has agreed with me, as I am happy to inform the committee. I then decided that the Stephenson bill was constitutional and that the Bourn bill was not constitutional, and the Lynch bill was so much like it that no one has made any claim on it; and the Tia Juana, I believe, has been decided the same way; and for the service I charged \$100, which was paid me. In my opinion I gave a pretty full examination.

Q. \$25 a case? A. Yes. And my opinion I find appears to be correct, as I am very happy to find, by the Supreme Court's subsequent decision. The Legislature passed a law two years ago authorizing the Coulter Bill and the Yosemite Turnpike Company to sue this State on the claim that the Legislature, after they had gotten the right to build their road, had passed a bill authorizing the building of another road, and thereby rendering their franchise valueless. And the bill provides that the plaintiff, before commencing suit, shall give a bond to the State for \$500 attorney's fee to be paid in case the suing party shall be unsuccessful. A suit was commenced, the Attorney-General employing me. The suit was for \$125,000. I got up the pleadings and I examined the records of the Yosemite Commission years ago as to what had been done. I went to Sacramento and we tried the case there four days—June 1st, 2d, 3d, and 4th, last year—and paid my own hotel bills and expenses. Judge Prewett heard the case; came down from Placer County; Judge Catlin being ill at the time. And the case was prosecuted by very able counsel and it was decided in our favor and saved the State \$125,000. I prepared the findings that were signed by Judge Prewett, and after the case was all over I saw Governor Markham in regard to the bill before the Examiners, and then the \$500 was really due to the State under this bond, and he desired me to file a writing in the case that I would attend the case in the Supreme Court if it went there; also, in case of a retrial in the Superior Court, to try it there without further charge, and I filed that writing, and the Examiners allowed me the \$500.

Then there is the case of Ball. A law was passed authorizing him to sue the State for his services away back in 1876 on the Folsom Prison, where he was the architect. He brought suit for \$41,250, and interest from December 3, 1876. There is the same kind of a bond; he is required to pay the State a \$500 fee in case of want of success. I attended to that case, prepared the demurrers, and the briefs, and the answers, and assisted in the argument; that case we defeated, and saved the State any judgment there; and for that I have not been paid as yet. Now, gentlemen, if I am correct, and have not forgotten anything, I have told you everything that I have been paid by the State, and the reason why it has been paid.

GENERAL BARNES: How much did you ask for this last case? A. Five hundred dollars.

Q. The same as provided in the bond? A. The same as provided in the bond.

Q. It does not come out of the State at all? A. They are both bonds,

and I filed my claim with the Examiners, and filed same kind of a writing, that I will attend to it in the Supreme Court.

THE CHAIRMAN: You say it does not come out of the State?

MR. BUDD: Well, there is a bond given for the attorney's fee in that amount in each of those cases. Consequently the money is collected from the individual that commenced the suit.

THE WITNESS: Now, excuse me, gentlemen, but I want to make everything right. Now in this article that is published in the "Chronicle"—

MR. DEVLIN: We do not want to go into that.

THE WITNESS: I want to make one statement about the Harbor Commissioners. It is stated that the next step in the farce was the presentation to the Board of Examiners, of a bill for \$500 by Judge Cotton for legal advice he had given the Attorney-General; that Hart, as a member of that Board, quickly approved the bill, and the State paid it. Now that is entirely untrue. There was no bill presented in that case at all. I never was paid a cent by the State in that matter. I don't know why it was ever published. It is wholly false.

THE CHAIRMAN: Let us not go any further in that direction.

MR. DEVLIN: I would like to have you segregate the services that were performed, before the extra deputies were allowed Mr. Hart, and those that were performed afterwards. I understand you to say the habeas corpus case for one. A. I can give you the dates, and then perhaps, Mr. Devlin, you can apply them yourself. I believe, I did give the dates, did I not?

Q. I think so. Yes.

GENERAL BARNES: What was before July, 1891, and what since? A. In the habeas corpus case, \$80; that was in January; Sugar Refinery was in February, and the North Pacific Railroad was in March; Stephenson-Colgan—that opinion was in April.

Q. 1891? A. Yes; 1891. They are all 1891. The Coulterville case.

MR. DEVLIN: That was in 1892. A. I was taken in that case in '91, but we tried it finally in June, 1892.

Q. Do you remember when the case was commenced? A. The Coulterville?

Q. Yes. A. No; I do not remember the date. I know the Ball case was commenced back in '91; I am not sure about that.

Q. Let me ask you one or two questions. In the case of The People vs. The American Sugar Refinery, were there not other counsel that appeared for the State of California? A. Well, this was after the time I was spoken to—it was at a time when there had been a referee appointed to consider the charges that were made, I think against the State, and he made a report that the State should pay something over \$20,000 for the expenses in that case. And these expenses had all accrued after the Supreme Court, all excepting one day, had decided that the whole proceeding was invalid.

Q. And what were you required to do in the case of the American Sugar Refinery Company? A. Well, I was engaged to attend to the matter, and relieved the State from paying those expenses.

Q. In settlement of the cost bill? A. Yes; well, it was not a regular cost bill. There were charges that had grown up under the receiver. There was a receiver appointed to take possession of the sugar refinery, and these were charges in connection with the receiver.

Q. In order that the committee may understand you—I know some-

thing about the case in a general way—the suit had been brought in the name of the People of the State of California before General Hart was elected Attorney-General, was it not? Brought in Judge Wallace's Court and judgment had been rendered declaring that the American Sugar Refinery Company should be dissolved because it was a trust? A. Yes.

Q. And Pat Reddy had been appointed a receiver? A. Yes.

Q. And then the attorneys for the American Sugar Refinery Company went to the Supreme Court and got out a writ of prohibition directed against Judge Wallace, directing him to proceed further, and on a hearing the Supreme Court made that order; was that a fact? A. Yes, sir; that is the fact.

Q. Then afterwards General Hart came into office as Attorney-General. Then there is a provision that, when the State loses a suit it shall pay costs. These costs are charged up against it, payable out of a certain fund if the fund is not exhausted, and they presented a bill, I presume, for costs in that case, and you attended to the settlement of those costs. Is that it? A. No; I do not understand it in that way. The Supreme Court had decided in the case of Havemeyer against the Superior Court that the appointing of a receiver by Judge Wallace was invalid. That all he could do was to enter judgment dissolving this trust, but he could not appoint a receiver until some creditor applied for a receiver and the appointing of the receiver was invalid, and hence, all that was done under that was invalid. And Judge Wallace still kept his receiver in possession of the property, and the Supreme Court cited him to appear, and he did appear in his own defense, and they fined him \$10 for contempt of the Supreme Court, and these costs grew up—

THE CHAIRMAN: Was the firm of — and Mitchell engaged in that case with you? A. Those gentlemen were engaged, Mr. Chairman, in the case before.

Q. Then you understand it was in connection with the costs? A. That grew up under the receiver. Mr. Black was appointed, I believe, if I remember correctly, a referee, as to what should be allowed the attorney—what should be allowed the receiver.

MR. DEVLIN: After an Act was passed by the Legislature to pay? A. Yes; an Act was passed to pay the laborers, and that is what prevented our prosecuting the bill, or taking some steps to annul the matter and prevent them from being paid.

Q. Was not that matter solely for the investigation of the Legislature as to what sum it would appropriate to pay expenses of that case? A. Well, I believe now, that the attorneys in the suit claimed their pay.

THE CHAIRMAN: They have a bill pending there now—their firm? A. Yes.

MR. DEVLIN: These cases that you speak of, brought for the purpose of compelling payment of certain claims for which money was appropriated at the last Legislature, the Lynch case and the Bourn case, you know that such suits were brought against the Controller, do you not? That the Attorney-General was not a party? Those were suits brought upon Acts of the Legislature, appropriating certain money to certain individuals and the Controller directed to draw his warrant, and do you not know that such suits were brought against the Controller of the State? A. Which Lynch do you mean?

Q. Lynch, Bourn, and Stephenson. A. Yes; Lynch, brought suit against Colgan.

Q. That is the only way he could bring it? A. Yes, sir.

Q. And in those cases did not Mr. Colgan employ special counsel to defend the cases? A. Well, I believe he explained to you yesterday how far he employed them. I was called upon by the Attorney-General to give my views in regard to the constitutionality of those before there were any suits.

Q. Why did General Hart require your opinion as to whether the law was constitutional or not? A. Well, those questions are difficult and out of curiosity—

Q. I am asking you why he required your opinion; I am asking you why he required you or anybody to give him an opinion, as to whether a particular Act was constitutional or not, before any suit was brought? A. Well, the suits, I suppose, were contemplated; that is, they were wanting their pay.

Q. Did not the Attorney-General, or did you not know at that time that Mr. Colgan had private attorneys employed in his interest and to attend to his interests in those matters? A. I do not know about that. I have got my letter now that I wrote to him.

Q. Well, of course, I think your opinion is right, Judge. I do not care to go into that. A. I happened to hit it right.

Q. In this Yosemite road case—that was a suit brought against the State? A. It was brought against the State.

Q. Who were the attorneys for the State besides yourself? A. General Hart and I.

Q. General Hart and you tried it? A. Mr. Belcher, Judge Waymire, and Mr. Treadwell were in Sacramento, and fought against us in the case.

Q. Have you been attorney in any cases brought against Mr. Colgan? A. No; I believe not.

Q. Never been attorney? A. No.

Q. Have you been attorney in any cases against the State of California, since General Hart's term of office, in any sense? A. I do not recall any. If you can suggest any—

Q. I do not know. I am simply asking you. I do not know whether you have or not.

GENERAL BARNES: At any rate, Mr. Cotton, you have stated all the cases in which you have been employed and not paid, or employed and paid by the State, through Mr. Hart, for which charges have been made? A. Yes, sir.

Q. And the total amount of your receipts and charges are how much? A. Well, I have not added them up.

Q. I thought you knew. It is \$1,200 and something, or \$1,230? A. Yes.

Q. Now, what assistance have you furnished the Attorney-General in the discharge of his duties for which you have not charged a cent? A. Well, in a good many ways. Now, I argued a case in the Supreme Court this January term—an application for a writ of mandate to the Superior Court of Yolo County, where the petitioner sought to have a defendant discharged because he had not been tried in sixty days, as the statute requires ordinarily. I made no charge for that. And early in Mr. Hart's administration he sent for me to come to Sacramento in

regard to the enforcement of the railroad taxes. And I gave it a very full examination, and came to the conclusion that those taxes could be collected, and I made no special charge for that; although, in this last railroad tax suit that was tried before Judge Hebbard, of course I expect pay in that suit. But at that time I went up, and we counseled generally over the tax suit. And in other matters he has asked my advice. He has been busy at times, and he has not had time to look up the questions, and has asked me if I would look them up. I have done so, and I have not undertaken to make up bills on those matters.

Q. Do you remember an opinion—an elaborate and careful opinion of yours—in relation to the taxation of National Banks? A. I wrote him an opinion on that subject, yes.

Q. After a careful investigation of the subject? A. Yes, sir.

Q. Did you charge anything for that? A. I made no charge.

Q. Mr. Hart never attempted to get any money out of the State to pay you for that? A. No; never claimed any pay; I never asked any pay.

Q. What other ones can you remember, without my mentioning any? A. Well, I know I wrote him an opinion in regard to the law of escheated property of this State—property that was escheated. I do not recall now exactly what I wrote, but I remember something of that kind.

THE CHAIRMAN: What case? A. Well, generally on the matter.

GENERAL BARNES: Escheated estates? A. Yes; property that was escheated to the State. I remember last fall he was sent to Siskiyou to get up a form of tax sale certificates where lands belonging to the railroad were struck off to the State; and he had to go away some place and hadn't time to prepare the certificate. I got hold of other certificates, studied the thing up and prepared a certificate, and passed it into his office, and I made no charge for that. And other matters. He talks to me just as freely as he pleases about cases.

Q. Judge Cotton, have you not continuously, during the time General Hart has been in office, rendered services of value and importance to the State without charge, and in respect to which neither he nor you have sought to obtain any compensation for you whatever? A. Certainly, I have. These matters I have mentioned, and others that do not occur to me now.

Q. The committee here has been informed and believes that the charges made by you for services rendered were exorbitant and excessive. I will ask you now, as an attorney at law, whether those charges made by you in the several cases are reasonable or unreasonable in respect to their magnitude? A. Oh, I would say they were very modest. I think that is one of my frailties—making moderate charges. I never have had a dispute with a client in my life over a charge.

Q. Are not those charges considerably below what, according to your experience, a lawyer of average intelligence and understanding would charge for the same work? A. I say they were.

Q. For a private individual? A. I should say they were. In the Sugar Refinery case, the \$250, I would say, was the largest compensation for what was done of any of these cases I speak of. Those were all very low and were moderate. In that Sugar Refinery case we contemplated more work, perhaps, than was done, and it took a different shape by reason of the Legislature passing a law to pay some of the employes;

but I say it was virtually a retainer in the case. The other charges were all moderate. Of course, in this Yosemite case, why, it is no compensation at all; \$500 for what work I did is no compensation. The magnitude of that suit—\$125,000—a \$5,000 fee would probably be a proper fee in a suit of that magnitude.

Q. I understand it to be already demonstrated, but the General wished me to ask you if, in the Coulterville case, and the Ball case, the statutes in relation to that litigation did not provide expressly that associate counsel should be employed and fix their fee? A. The statute does not exactly in terms say you shall employ associate counsel, but it says that the party, before suing, shall give a bond to the State for \$500 attorney fees; and that necessarily, I should say, would imply it. And I made no claim in that case until I was successful—successful in each of the cases.

MR. DEVLIN: In examining the national bank question, what matters did you examine? A. In regard to taxing the property of national banks. I do not recall to mind now what the question was or what the proposition was, exactly.

Q. You did not find it a very difficult question to examine, did you? You found the authorities all one way; you found it was decided in California, in *People against Heilbron*, that they could not assess the shares of a national bank? A. They cannot assess them at a higher rate than other cash is assessed in the State of like character.

Q. These other suits that you speak of, the Coulterville and the Ball cases, were decided on the ground that the statutes were unconstitutional; on the ground that they were special legislation, in both of those cases; the Court did not pass upon the merits at all? A. The Coulterville case was decided upon the constitutional question and decided also upon the ground that the State could not be liable any way.

E. S. HELLER.

Recalled.

THE WITNESS: In the matter of the checks used in the Phillips case, I looked that matter up after going back. I went down to see Mr. Martin Heller, and found that a Mr. Nickelsburg was indebted to the estate, and so the amount of money to cover the cost of settling the Phillips case was obtained from him by checks, and here is a certified check for \$3,000, which was payable to my order, and the other one for \$862 91, indorsed over to the Attorney-General.

MR. DEVLIN: These are the checks you referred to in your testimony, are they? A. Yes.

Q. As having been delivered to the Attorney-General in part payment in the case of *The People against Phillips*? A. Yes.

MR. DEVLIN: I will just read them to the reporter:

Cahn, Nickelsburg & Co., manufacturers and importers of boots and shoes, Nos. 129-131 Sansome Street, San Francisco. Factory, 115-117 Hayes Street.

SAN FRANCISCO, July 23, 1891.

No. 513. London, Paris, and American Bank, (Limited). Pay to the order of E. S. Heller, (\$3,000) three thousand dollars.

Signed:

CAHN, NICKELSBURG & Co.

Indorsed: Pay to the order of W. H. H. Hart, Attorney-General of the State of California. E. S. Heller. W. H. H. Hart, Attorney-General of the State of California.

Stamped on the face: Good when properly indorsed. July 23, 1891. E. Chevasseur.

Also marked on the face: Paid August 3, 1891. London, Paris, and American Bank.

The second one:

Cahn, Nickelsburg, & Co., manufacturers and importers of boots and shoes, No. 129-131 Sansome Street, San Francisco. Factory, 115-117 Hayes Street.

SAN FRANCISCO, July 25, 1891.

No. 519. London, Paris, and American Bank (Limited). Pay to the order of E. S. Heller eight hundred and sixty-two, ninety-one one hundredths (\$862 ⁹¹/₁₀₀) dollars. CAHN, NICKELSBURG & Co.

Indorsed: Pay to the order of W. H. H. Hart, Attorney-General of the State of California. E. S. Heller. W. H. H. Hart, Attorney-General of the State of California.

Stamped on the face: Good when properly indorsed. July 25, 1891. E. Chevasseur.

Also stamped on the face: Paid August 3, 1891. London, Paris, and American Bank.

Q. The balance that was paid of the amount stated in the stipulation was paid in coin? A. Yes.

Q. On account of *The People against Phillips*? A. Yes.

Q. Those were the two checks that were presented? A. Yes.

GENERAL BARNES: How was that balance paid—in currency or gold? A. Well, now, I cannot remember, General; you see, my recollection of the entire matter is a little hazy, and it was after I looked the entire matter up that it came back to me.

Q. The proposition made by the prosecuting attorney would seem to infer that you did know it was paid in money; that was all? A. No.

Q. The prosecuting attorney said "in coin?" A. No; I am not clear about that.

T. I. BERGIN.

Sworn.

MR. DEVLIN: Mr. Bergin, you were one of the attorneys in the case of *The People vs. Wm. Blanding*? A. Not strictly an attorney—counsel.

Q. Did you have anything to do with the settlement of those cases with the Attorney-General? A. Yes, sir.

Q. Were you instrumental in paying him money or delivering him the checks to settle the judgment? A. Yes, sir; all with the exception of one.

Q. Will you please state to the committee what was done in that respect? How the money was paid? A. The Attorney-General, through letter, informed me—I would not be positive now whether it was the Attorney-General—Messrs. Miller & Langhorne wrote me a

letter informing me of the amount to which they claimed the People were entitled under the statute. I called a meeting of the various clients that I represented in the case, and submitted the matter to them, recommending that each case be settled. They assented to that; and from time to time forwarded their respective checks for the amount that each would have to pay. The checks were not all furnished at the same time, but as they were furnished, I deposited the money in the Nevada Bank at San Francisco, taking a certificate of deposit for it; and the matter remained in that shape until I had collected the money from all of the parties whom I represented; in fact more than all, except Mr. Quackenbush. Mr. Quackenbush had assented with the other sureties to the compromise, and had agreed to furnish his proportion of the funds to pay it, but I was unable to get him to do so. I applied to him repeatedly to get him to do it, and finally lost all patience over the matter; but I settled with all of the others—in behalf of all of the others. I think, in making the settlement with Mr. Hart, I turned over certificates of deposit. My recollection is that all the moneys that I turned over were in the form of certificates of deposit, with the exception, perhaps, of the amount paid by the estate of the late Peter Donahue. That was in the form of a check, but now I am not prepared to state in whose favor it was. It possibly may have been in favor of Mr. John T. Doyle, and by him indorsed over, but with that exception the moneys were paid over in the shape of certificates of deposit on the Nevada Bank.

MR. KAHN: Can you tell us between what times those checks were paid—approximately? A. The matter has entirely disappeared—I dismissed the matter from my mind altogether after it was settled.

Q. Was it prior to December last? A. It was some time in July, 1891. The papers will show the condition of the case, because of course they were signed and the certificate and check handed over at the time.

Q. Some time in July? A. In July, 1891, I think it was. The papers, however, will show the exact date.

Q. Have you any recollection of what the character of the certificates of deposit, and the check was? A. No; I could not now state, sir.

Q. Have you any record that would enable you to recollect it? A. Since the death of Mr. McAllister, I have not been steadily in practice, and have been mostly closing up matters that way, and I attend to my business altogether; and owing to that, I have not got the records that a professional man would regularly have. Of course this ended all the matter, and I supposed it would be the last I would ever hear of it, and owing to that I have no record. Of course, I think, by reference to the books of the Nevada Bank, I would be able to find the exact dates and the exact amounts. The gentlemen who gave me their checks, of course are here in town, I think.

MR. KAHN: We will get that from the bank.

MR. DEVLIN: Mr. Bergin, as I understand you, these different defendants, from time to time, gave you their individual checks for their proportion of the amount which you paid in satisfaction of this judgment? A. Yes, sir.

Q. You then cashed the checks and took certificates of deposit, awaiting the gathering of the whole sum? A. I did not exactly cash the checks.

GENERAL BARNES: You are making Mr. Bergin assume a fact there. There were no judgments.

MR. DEVLIN: No judgments at that time? I want to get at this, Mr. Bergin, so we can trace the papers or moneys to Mr. Hart's hands. All that you delivered to Mr. Hart were certificates of deposit, were they? A. I think they were, sir, with the exception of the amount that was paid on behalf of the estate of Peter Donahue. The certificates of deposit, according to my recollection, are in my own name, in my favor, and when I came to adjust them, I indorsed them to Mr. Hart and delivered them over to him.

Q. Did you deliver all the certificates of deposit that you had in your possession to Attorney-General Hart at the same time? A. Yes.

Q. All on one and the same occasion? A. Yes, sir.

Q. And did you at the same time deliver what you think was the check of Mr. Peter Donahue, or was that delivered through another source? A. No, sir; that was delivered by me, sir, at the same time.

Q. Do you know on what bank Mr. Peter Donahue would draw his check? A. I really could not tell you now, but my impression is that it was on the bank of Donahue, Kelly & Co. I think that is the bank at which they banked. I may be in error about that.

Q. Is Mr. Peter Donahue dead? A. Yes sir; he is dead.

Q. Who drew the check, is what I want to get at. A. The check was drawn by Mr. John T. Doyle, furnished to me by him.

MR. BLOOD: During how long a period of time were you collecting in these various amounts? A. Well, I could not say that now. It is something about which I have no means of refreshing my recollection, but it covered some little time.

Q. Several months? A. I think that is not at all improbable.

Q. You had a great deal of trouble in collecting them in? A. Well, no, with the exception of Mr. Quackenbush and the executors of the late Mr. Peter Donahue.

Q. And you retained all of these several amounts until you collected the total? A. Yes.

Q. And you did not pay them over to the Attorney-General until everything was completed for settlement? A. That is my recollection, sir.

Q. Did you ever collect any from Mr. Quackenbush? A. I did not, sir.

Q. And you were the attorney for those parties? A. Yes.

Q. And you were collecting the money for the Attorney-General of the State? A. No.

Q. You were collecting the money to settle with the State? A. Yes.

Q. And you collected it by drafts, or checks, or otherwise? A. Yes, sir; as I told you, these different gentlemen gave me their checks. Those checks I deposited in the Nevada Bank at San Francisco, taking a certificate of deposit for the amount.

Q. In your own name? A. In my own name. And holding those until I closed the matter with General Hart, paying him over the certificates of deposit, except, as I say, the check given by Mr. John T. Doyle, which was not cashed, but was indorsed over.

GENERAL BARNES: You did not handle the Quackenbush money? A. No, sir. That, I believe, was not settled for, or a long time afterwards.

MR. KAHN: That was settled a long time afterwards, you say? A. Oh, yes.

GENERAL BARNES: Mr. Quackenbush was, however, one of the defend-

ants in the suit that you have spoken of, and in which the collections or contributions were made to you by certain defendants? A. Yes. Mr. Quackenbush was dilatory in payment. He was hard to get money out of.

MR. DEVLIN: I will state, Mr. Chairman, that so far as I know, all the testimony placed in my hands by the committee, or by anybody else, has now been presented, with the exception of showing the time at which the certificates of deposit, delivered by Mr. Bergin to General Hart, were cashed by him at the Nevada Bank, or elsewhere, or, if they were cashed at all. There has been no proof on that subject. The proof is simply that Mr. Bergin delivered the check of Mr. Donahue and the certificates of deposit to Mr. Hart some time in July, 1891; and I would suggest that we might agree to let the bank officials hunt that matter up and write to the committee in Sacramento the date when these certificates of deposit, in the name of Mr. Bergin, were cashed by General Hart. With that exception, I think, all the testimony is closed.

GENERAL BARNES: The difficulty about that is, we do not know anything about Mr. Bergin's business. He says he took certificates of deposit there in his own name. And I understood him to say that when he got together a sufficient number of certificates of deposits he turned them over to Mr. Hart. Of course, it is not for me now to say or to argue that Mr. Bergin's memory is defective in that respect. But I will simply intimate to you that any attempt to find any such thing as that in the Nevada Bank, with respect to Mr. Hart, will turn out to be a signal failure. We would agree if there were any such thing there. Permit me to inquire if the committee has taken all the testimony it proposes to take, unless we should offer some?

THE CHAIRMAN: I think we have. We do not positively say that we have because, if we are not satisfied on any point, after we have conferred, we will commence it again.

GENERAL BARNES: Whenever we know that you are through, why then we will know what to do.

MR. DEVLIN: Before this case closes I desire to say, so that there may be no misunderstanding about it, that I am informed that the committee desires to hear a statement from Mr. Hart as to where this money was during the time it was in his possession.

MR. BUDD: You have got a judgment of the Court showing that.

MR. DEVLIN: I now request him to appear upon the stand and inform this committee where this money was from the time he collected it up to the time that he obtained the certificate of deposit from the Nevada Bank.

MR. KAHN: That is the meat.

MR. BUDD: If that is the meat, the committee has not made any such charge. The charge is that he did not pay it over to the State. There is nothing stated about whether he put it in the bank or used it himself, or what he did with it.

MR. SIMPSON: Retained it in his possession.

The committee took an adjournment to meet at Sacramento, in the Supreme Court room, Department No. 2, at the State Capitol, on Thursday evening, February 23, at 7:30 o'clock.

On Thursday, February 23, 1893, the time set for the next meeting of the committee, a quorum could not be obtained and the Chairman announced that an adjournment would be taken until Saturday, February 25, 1893, at 2 P. M.

On Saturday, February 25, 1893, the committee met at four o'clock P. M., a quorum not being able to be obtained before that time, and the following additional proceedings were had:

MR. DEVLIN: W. H. H. Hart is our next witness, and I ask that W. H. H. Hart be sworn.

THE CHAIRMAN: I understand that Mr. Hart does not want to testify.

MR. DEVLIN: You can swear him as a witness and let him refuse to testify when the questions are asked him.

THE CHAIRMAN: Does Mr. Hart wish to testify?

GENERAL BARNES: No, sir.

MR. DEVLIN: It is not what Mr. Hart wishes to do. Mr. Hart can refuse to testify after he is sworn. I ask that he be sworn. If he wants to refuse to answer questions, then let him refuse to answer them after they have been put. I will ask the Chairman to call Mr. Hart and swear him as a witness in this proceeding.

THE CHAIRMAN: Well, I understand Mr. Hart declines.

MR. DEVLIN: We will ask him to stand up, and that he be sworn.

THE CHAIRMAN: Is that the understanding—that you do not wish to put him on the stand?

GENERAL BARNES: Yes, sir.

THE CHAIRMAN: Is there any rebuttal to the evidence that has been produced before the committee?

GENERAL BARNES: No, sir.

THE CHAIRMAN: That will answer the same purpose, Mr. Devlin, as refusing. We do not want to go to any extremes towards putting him in a position that might be embarrassing to him contrary to the advice of his counsel.

MR. DEVLIN: I simply want to state, so that the matter may be thoroughly understood. As I understand the matter any person, in a matter of this kind in which a committee is investigating, is compelled at least to be sworn; and if he refuses to testify upon any matter material, it is a contempt for which the committee or the House can punish him. If he is asked a question and he desires to make a constitutional objection to it, he can do so. In order that there may be no question, I desire to say that I have no further testimony except what I desire to get from Mr. Hart.

GENERAL BARNES: I understand, Mr. Chairman, that that applies to witnesses and not to a case like this.

MR. DEVLIN: It applies to every case except a criminal prosecution.

MR. BUDD: I do not understand why the attorney of this committee persistently calls for the same matter.

THE CHAIRMAN: We thought probably you had reconsidered the matter.

MR. BUDD: The attorneys for Mr. Hart expressed their opinion to this committee time and time again, and thought this committee understood it.

MR. DEVLIN: I wish to call the attention of the committee to Section 424 of the Penal Code: "Each officer of this State, or of any county,

city, town, or district of this State, and every other person charged with the receipt, safe-keeping, transfer, or disbursement of public moneys, who either—

"1. Without authority of law appropriates the same, or any portion thereof, to his own use, or the use of another; or,

"2. Loans the same, or any portion thereof; or, having the possession or control of any public money makes a profit out of or uses the same for any purpose not authorized by law; or,

"3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

"4. Unlawfully deposits the same, or any portion thereof, in any bank, or with any banker or other person; or,

"5. Changes or converts any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or,

"6. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

"7. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

"8. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

"9. Willfully omits to transfer the same, when such transfer is required by law; or,

"10. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same, is punishable by imprisonment in the State's Prison for not less than one nor more than ten years, and is disqualified from holding any office in this State."

And then the Constitution, Article XI, Section 17, provides that the making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

Of course, so far as we are able to establish before this committee with such testimony in our hands, we can simply trace the money into Mr. Hart's possession, show that he has retained it, at the best, until he paid it over in Court some time this month, and I think the committee is justified in drawing the inference, and I now charge that Mr. Hart has, without authority of law, appropriated the money to his own use; that he has loaned the same and made a profit out of it; that he has failed to keep the same in his possession until disbursed or paid out by authority of law; that he has unlawfully deposited the same, or some portion thereof, in some bank, and that he has changed and converted a portion thereof from coin into currency and from currency into coin or other currency without authority of law. And I ask him to either admit or deny those charges. I now make those charges and say that the evidence justifies them. If he desires to refute them, why, all right; and if he does not, let it stand as it is.

After arguments by General Barnes and Mr. Devlin, the matter was submitted to the committee for consideration.

TUESDAY, February 28, 1893—2 o'clock P. M.

CHARLES H. JACKSON.

Sworn.

MR. DEVLIN: What is your name, Mr. Jackson? A. Charles H. Jackson.

Q. What position do you occupy in reference to the Attorney-General's office? A. Deputy Attorney-General.

Q. How long have you been such? A. A little over a year.

Q. Your office is where? A. My office is on California Street—426, rooms 9-11.

Q. At the Attorney-General's office in San Francisco? A. That is where I do my work; I do the brief work mostly of the office, and I get my work at the central office on Larkin Street.

Q. Where is your private office? A. That is my private office.

Q. Where is General Hart's office in San Francisco? A. On Montgomery Street.

Q. Have you been frequenting his office at the Supreme Court building in San Francisco? A. Yes.

Q. Usually? A. I find it necessary to go out there from time to time.

Q. Have you any knowledge of General Hart having had in his possession during the last year, in a safe or otherwise, any sum of money collected in these Harbor Commissioner suits? A. I would not know that at all, because I have not that department of the office business; that is, the details of the office I don't know anything about.

Q. I am asking you if you do know or not? A. I simply know that I do the brief work; that is all.

Q. I understand you to say that you do not know, and never did know, that General Hart had in his possession any sum of money belonging to the State of California, or the Harbor Commissioners', or any other fund, collected in those suits? A. I know nothing about the finances of the General.

Q. He never told you, did he, that he had collected any money? A. He would not tell me.

Q. He did not, I say? A. He did not; no, sir.

Q. He did not tell you where that money was placed, did he? Where it was situated, where he kept it, or anything of that kind? You hadn't any conversation with him about that? A. I do not know anything about the finances of the General at all.

Q. Do you know what kind of a safe he has in his office in the Supreme Court building? A. He has no safe at all there.

Q. No safe at all in his office in the Supreme Court building? A. Not to my knowledge.

Q. Have you been in his office on Montgomery Street? A. Yes, sir.

Q. Does he still maintain that office? A. I believe he does.

Q. Do you know whether there is any safe in that office or not? A. Yes, sir; he has a large safe there.

Q. Are there two or three rooms; a reception room and other rooms?

A. He has two large rooms and one small room.

Q. Which room was the safe in? A. The safe is in the outer room, I believe.

Q. The reception room? A. He has a very large safe there, as I remember it.

OREGON SANDERS.

Sworn.

MR. DEVLIN: Mr. Sanders, you are Deputy Attorney-General? A. Yes.

Q. Have been such, for how long? A. Since April, 1891.

Q. Where is your office? A. 305 Larkin Street.

Q. That is in the Supreme Court building? A. The Supreme Court building.

Q. General Hart's office? A. Yes.

Q. Did General Hart ever inform you that he had collected for the State of California, moneys belonging to either the State, or State Harbor Fund, or any other fund in the State in what are known as the Harbor Commissioner suits? A. I do not know that he ever did, in so many words, say that he had money; but I inferred it from the fact that he called my attention to the Act of the Legislature and asked me for my opinion about where the money belonged.

Q. He never told you that he actually had collected the money, did he? A. I do not know that he did; but I inferred it from the fact that he asked me where the money belonged. I saw the Act, authorizing him to settle certain suits—Phillips and somebody.

Q. Did he ever tell you where he kept the money? A. Oh, no.

Q. Is there any safe in the office at the Supreme Court building—in his office there? A. No; there never has been a safe since I have been there. I went there when he did.

Q. Is there any place there for keeping money, except drawers that might be opened easily? A. No; there is no safe there.

Q. Are you familiar with his office on Montgomery Street? A. I have been in there only probably three times in the last year and a half—three or four times—but I stopped in there when I first went into his office. I stopped there for two months or such a matter before we moved out to the Supreme Court building; so I know the office very well.

Q. In which office does General Hart spend most of his time when he is in San Francisco, the office on Larkin Street, or the office on Montgomery Street? A. Well, generally he spends the forenoon at the Larkin Street office. That is the best time to find him there; in the morning. Then he goes off, and whether he goes to Court or to his down town office, I do not know. Sometimes he informs me where he is going, if he is going to Court or to the down town office. But he is frequently there at the Larkin Street office in the afternoon as well as the forenoon; sometimes there all day.

Q. So far as your knowledge, as to where this money was, is concerned, you only know inferentially that General Hart had collected it, and he never told you where he kept it, or the amount? A. No; I did not know the amount and did not know anything about it, except that I inferred that he had money from the circumstance that he asked me where it should go, that is, wanted me to look at the Act and see what I thought about it.

Q. You do not know where the money was kept? A. I do not.

MR. STONE: What do you mean by "Wanted you to examine the Act and give your opinion as to where it should go?" A. That is, what fund it should go into.

Q. Did you express an opinion as to that? A. I think I did. I first thought, from the reading of the Act, that it belonged in the General Fund, here; but, after I became acquainted with the fact, which I believe does not appear in the Act itself, that it was money that was recovered in a suit on account of moneys embezzled from another fund—the Harbor Fund—I then expressed the opinion that it should be paid back where it would set right the wrong that had been done, and should go to the fund from which it had been embezzled. Then General Hart suggested that the State had been to some costs in that matter and the State ought to have back at least the costs that the State had been out in collecting it; something to that effect.

Q. In short, there was somewhat of a question, covering quite a period of time, was there not, as to what fund that should go to and what disposal should be made of it? A. I do not know how long it was.

Q. I mean it covered a considerable time? A. Oh, no; I was only talking with him a few minutes about it.

Q. I do not mean that. I mean as to the length of time in which the question was open? A. I do not understand what you mean.

Q. Why, I mean was there but one conversation about it. About where the money should go? A. I do not recall any but that one at the time he instructed—

Q. (Interrupting.) About when was that, Mr. Sanders? A. Oh, that was several months ago. I do not know exactly how long.

Q. A year? A. Oh, I think not. I should judge four or five months; somewhere along there; maybe less than that.

MR. DEVLIN: I want to ask you one other question, Mr. Sanders. Are there any dockets, or records, or books of account kept, that you know of, in the office of the Attorney-General, showing the receipt of public moneys or moneys collected on behalf of the State? A. If so, I have never seen the book.

Q. To your knowledge there is none? A. So far as I know, there is no such book.

Q. Who is the person that would know, do you know? A. I presume Mr. Betz here would know about that.

Q. Mr. Betz? A. Mr. Betz, here, yes. That is a matter I have nothing to do with.

W. H. LAYSON.

Recalled and sworn.

MR. DEVLIN: Mr. Layson, you occupy the position of First Deputy Attorney-General of this State? A. Yes, sir.

Q. You have been in that position how long? A. I think I went in the 5th of January, 1891, if I remember.

Q. Been in that position ever since? A. Yes, sir.

Q. Do you know, or did General Hart ever inform you that he collected money in what is known as the Harbor Commissioner suits and received the same in his possession? A. He informed me of the collection of the Knight money. I hardly know how to describe it; Knight, I think, was one of the bondsmen.

Q. Do you know where that money was kept? A. No.

Q. Did you ever see it? No, I never did.

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Q. Did General Hart ever tell you where it was kept? A. Not until recently.

Q. Before this investigation—did he tell you where it was before he brought this suit? A. No, sir.

Q. In San Francisco did he tell you where it was kept? A. No, sir; I never asked him.

Q. Well, did he ever tell you? A. Well I asked him one day if that Knight matter had been settled. I think that was some time in December last—November or December.

Q. Did you make out his report as Attorney-General? A. No, sir.

Q. Who did make it out? A. He and Mr. Betz.

Q. Mr. Betz made it out? A. I asked him if the Knight matter had been settled, and he said it had.

Q. Your office is here in Sacramento, Mr. Layson? A. Yes, sir.

Q. Do you keep a record in your office of the different suits brought in which the State of California is interested, showing the different steps taken? A. Well, yes.

Q. Have you in your office any docket showing the condition of those suits: People against Knight, and People against Blanding and others? A. I cannot say as to that; I am not the clerk. We have dockets and books of all sorts of cases; and those cases, I do not know whether the clerk copied them into our dockets or not.

Q. Who attends to that work? Which one of your force is engaged in that work? A. M. S. Hedden, clerk. I think sometimes probably Mr. Betz does a little bit. I do not do that.

Q. Do you keep the dockets, or where are those dockets kept? A. We keep dockets here. I do not know whether they have duplicates in San Francisco or not.

Q. Is Miss Hedden in Sacramento? A. She is in San Francisco; but the dockets are in there.

Q. Did General Hart ever tell you the form that this money was paid in? Whether currency, or coin, or certified checks, or otherwise? A. Never did; not that I have any remembrance of. I will state here that the office is run somewhat on the division of labor plan. I do certain work—

Q. What I want to get at is: You had no knowledge, up to the time that this investigation was commenced or talked of, that General Hart had collected moneys in what is known as these Harbor Commissioner suits, of what the money consisted, how much it was, or where it was kept?

A. Yes, I said I had knowledge of the collection of the Knight money.

Q. That is as far as your knowledge went? A. I think it is. That is the only money I ever inquired about. The only reason I inquired about that was, I had a friend who was interested in it.

Q. How did you come to learn that? A. From the General.

Q. Well, did you speak to him, or did he speak to you about it? A. Yes; I asked him if the Knight matter had been settled, and he said it had.

Q. You had a friend that was one of the defendants, or was interested with one of the defendants? A. He is not one of the defendants. He is a friend of some of the defendants.

Q. He spoke to you about the matter, did he? A. Oh, yes.

Q. How long after the Knight money had been collected did this conversation take place between you and the General? A. Not very long; I do not remember exactly.

Q. Then, as a result of that, you spoke to General Hart? A. Well, I spoke to him about it before it was settled—some time ago. I think it was last spring or summer.

Q. What I am getting at is, all the information you had came in answer to inquiries that you made of General Hart? A. I knew that was in process of settlement for several months.

Q. All the information you had concerning the payment of this money came in answer to inquiries that you made of General Hart? A. Yes. I never asked about the others at all.

THE CHAIRMAN: I will state that when the Committee on Ways and Means were first inquiring into the disposition of this money, they directed their clerk one evening to visit the Attorney-General and ascertain what he had done with it. The clerk reported to the committee that General Hart was absent, and that two of the clerks or deputies in the office informed him that they knew nothing whatever about it; had heard of no such moneys, and knew nothing about them. Are you one of those parties? A. Well, he spoke to me one night, walking down street, something about those cases—the fees of Langhorne & Miller, and others. I told him I did not know anything about their fee; that that was a matter that General Hart attended to, and he would know more about it than I would. He was asking me about their claims—the justness of their claim—but I do not think he said anything to me about the money.

Q. My recollection is, he informed the committee the next day, or at our next meeting—we were not asking about the validity of the claim, and I am merely stating this to get a reason for the question; we were not seeking information as to the validity of Langhorne & Miller's fees, but we were endeavoring to find out where the money that they had collected had gone, in order that we might, if possible, make the fund that had received it pay the fees. And the clerk was directed to ascertain, if possible, from the Attorney-General, what he had done with the money, and the information brought back was that the two clerks in the office informed him that they knew nothing about the money, had heard nothing about it, and could give us no information. A. No—

Q. (Interrupting.) Now, I want to know if you did so inform that clerk. He is in the building here, and it might be necessary to subpoena him, if there is any mistake in the matter. A. I do not remember the details of the conversation. He might have asked me if that money had been paid in, or something.

Q. I would like for you to state whether you did or did not so inform him, if you can? A. I do not remember, doctor.

MR. DEVLIN: You remember the conversation, do you not? A. I remember the conversation.

Q. You do not want any more particulars about time or place, or anything of that kind? A. I remember that we walked down from the Capitol, two or three blocks down the street here—

Q. Do you mean to say that you did not tell him that, or that you do not remember that you told him that? A. I do not remember.

Q. You do not mean to say that you did not tell him that? A. No; I do not deny it, and do not affirm it. I say, I remember him speaking about it; he came in the office one day and spoke about the claim; and these suits never came in my line. I had nothing to do with them, and I did not want to express an opinion on their fee; and I did not know anything about that.

Q. Is there a safe in your Sacramento office? A. No, sir.
 Q. No safe? A. No—except a little tin box or something like that.
 Q. No safe? A. No.
 Q. You have access to all of those tin boxes and drawers in your office, have you not? A. Oh, I think so.
 Q. Was there any portion of this money kept in your office in Sacramento? A. I do not know.
 Q. Would you know it if there was? A. Oh, the General has a drawer there in which he keeps papers and which I hardly ever go into.
 Q. What kind of a drawer is it? A. It is a drawer in the desk.
 Q. Have you got a key to open it? A. He has a key.
 Q. Have you a key? A. He generally leaves a key in there. I have never gone through it, except once to look for a letter for him.
 Q. When was that? A. Oh, I guess it is pretty near a year ago.
 Q. You did not find any money in the drawer at that time? A. No; I was just looking for an envelope with an address on it; I did not look very thoroughly.
 Q. This drawer is in a desk that has a series of drawers in it, and the same key locks them all, is that so? A. No; I think that key locks two drawers in the desk.
 Q. So far as you know, there was no money kept in the office in Sacramento? A. If there was, I do not know anything about it.
 Q. You have charge of the Sacramento office, have you not? A. I suppose so; so far as I know.
 MR. STONE: Mr. Layson, I understood the Chairman of this committee to ask you if you did not state that you knew nothing about the money. That is a fact, is it not? A. Yes; that is, the disposition of it.
 Q. You did not know anything about it?
 THE CHAIRMAN: No; that is not the point. He said he knew nothing about its having been collected. A. Well, I do not, except the Knight money. That was the only money I ever inquired about.
 THE CHAIRMAN: I understood him to testify that Mr. Hart had told him that he had collected some? A. The Knight money.
 Q. Well, that is part of it? A. Yes.
 Q. The information we got, after having sent there, was that the attendants of the office at that time knew nothing about any of it having been collected. A. Well, I will say as to that: I think probably there was a misunderstanding, because I knew of that money—the Knight money—as I say, because a friend had written to me before the settlement, and I had spoken to the General several times concerning the settlement, and afterwards he told me he had settled it. That was the Knight money; but the others I knew nothing about.
 MR. DEVLIN: I will ask you one other question: With the exception of the Knight money, did you have any knowledge or information as to the collection of any other money? A. I do not think I ever had a conversation with the General as to any other money or on that subject.
 MR. STONE: I believe it is a matter of record that your particular duties, Mr. Layson, are to write briefs in criminal cases more particularly? A. Well, I assign the work mostly myself; I send work down to Mr. Jackson, down to the city, and I do a great deal of briefing work, write opinions and letters, and sometimes send them down below.
 Q. You have no confidential relations with General Hart as to the settlement of cases, or as to what he does in the matter of the settlement

of cases? A. All matters of leave to sue, giving parties the right to bring suit, and all financial matters, matters of revenue, with reference to the Controller of State, the Treasurer, and others, I always refer to the Attorney-General and dismiss them from my mind.
 Q. All matters of compromise, or affecting the decision in cases in any way, you have nothing to do with, as I understand it? A. I leave all those to the General.
 Q. And he takes personal charge of them? A. Yes, sir.
 MR. DEVLIN: You do whatever you are requested to do, Mr. Layson? A. Try to.
 Q. You have not got a settled rule in your office by which certain work is divided between the different deputies? A. No, sir.
 Q. You occupy the position of First Deputy Attorney-General; what is the distinction between First Deputy, Second, and Third? A. Oh, there is none at all.
 Q. Do you sign the work of the other deputies in the Attorney-General's absence, or are all the other deputies allowed to issue opinions in their own name? A. Yes.
 Q. All three of them? A. Yes; Mr. Jackson is never.
 Q. Mr. Sanders? A. Yes.
 Q. Write his own name to them? A. Yes.
 Q. After consulting you, or without consulting with you? A. Without consulting me. But he has consulted with me.
 Q. By reason of occupying the position of First Deputy Attorney-General, do you occupy a closer position to the Attorney-General than the others? A. No, sir; on equal footing.
 Q. Is there any distinction between the First Deputy, Second Deputy, and Third Deputy? A. There is not, sir.
 Q. Is there a difference in salary? A. Oh, I might explain that. I think in the original bill that was drawn there was probably a distinction—if you want that explained.
 Q. Well, that is all.
 THE WITNESS: I think in the original bill, as drawn, there was a distinction in the position, and it was afterwards leveled.

ALBERT BETZ.

Sworn.
 MR. DEVLIN: Your name is Albert Betz? A. Yes.
 Q. What position, Mr. Betz, do you occupy in relation to the Attorney-General's office? A. Stenographer.
 Q. How long have you been in such position? A. Well, I think it was in April, '91.
 Q. 1891? A. Yes. Although I was in the office before that, since the 5th of January.
 Q. Been in that position continuously ever since? A. Yes; ever since.
 Q. Did you assist General Hart in the preparation of his annual or biennial report? A. I did.
 Q. Did you make it out yourself, or did he make it out? A. Well, what portion of the report do you mean?
 Q. Well, did you make out any portion of it yourself without consulting him? A. I did.

Q. What portion? A. The docket portion.

Q. What do you mean by the docket portion? A. Well, the docket in our office, of cases.

Q. Do you keep a docket in your office? A. We keep a docket in our office. I do not keep it; the clerk keeps it.

Q. Who is the clerk? A. Miss Hedden.

Q. Under your direction? A. Not particularly. I assist her sometimes and direct her sometimes.

Q. Are you familiar with the docket? A. I am.

Q. That docket shows the name or title of every case brought, I suppose, in which the State of California is interested? A. The cases that we brought, yes—that were brought since we were in the office.

Q. Does it show anything about any other cases? A. Well, we had a complete set of new dockets when we took office; and in preparing our report this year I took from Attorney-General Johnson's docket reports of different cases that were entered in his reports, that were not closed.

Q. When you went into the office did you find dockets left there by Attorney-General Johnson? A. Well, I believe there were some there. I couldn't make anything out of them, though.

Q. What did you do with the cases that you attended that were in that docket? Transcribe them into your docket? A. Well, in his last report of '90 he had given all cases that were supposed to be on his docket; and I followed that, because I could get more information from that than I could get from the docket. I never could understand that.

Q. I am asking you about the cases that appear upon General Johnson's docket, which were on that docket when you took office, and cases that General Hart attended to in his term of office. Did you transcribe those cases into your new docket, or did you make the entry upon the dockets formerly kept by General Johnson? A. We transcribed some of them, I think, into our docket. I suppose I made an entry of half a dozen cases in the docket myself.

Q. Where are the dockets? A. In the office.

Q. What office? A. Here in Sacramento.

Q. That is where those dockets are kept, is it? A. Generally. They are sometimes in San Francisco.

Q. Are the dockets here now? A. They are, I believe.

Q. Did you know, or did General Hart ever inform you, that he had collected money for the State of California, or for the Harbor Improvement Fund, or for any other fund, in what are known as the Harbor Commissioner suits? A. I did.

Q. When did he tell you that? A. Well, he told me, and I also knew it, from the business of the office. I drew up all the stipulations—

Q. (Interrupting.) Were you familiar with all the collections that were made from time to time? A. I was in those cases.

Q. Where did you enter them? Upon what books? A. I do not know that I entered them on any books.

Q. You do not know that you entered them on any book? A. No.

Q. How did you come to be informed of the transactions and the amounts collected? A. Well, we wrote a great many letters in regard to that money, all of which I wrote. When the cases were settled, I wrote the dismissals. I think I wrote all those stipulations that were

read the other day in San Francisco, although I am not certain as to one. I could tell if I saw it.

Q. Does your docket show the entry of those Harbor Commissioner cases? Are there any records in the office showing that fact? A. I do not know.

Q. Did you see the money when it was collected, or the checks or other property, turned over in settlement? A. Well, of course I was in and out of the office. I knew when they came in with the money. I understood they came there for the purpose of settlement. They did not come and put the check under my eyes to look at, or whatever moneys they had.

Q. Did you collect, yourself, any of the checks or certificates of deposit? A. I did not.

Q. General Hart did that personally? A. He did.

Q. Do you know where that money was kept? A. Well, I had no particular knowledge of where it was kept. I always understood, and my impression always was, from what Mr. Hart had told me and other matters, that it was in his safe at 230 Montgomery Street.

Q. Did General Hart so inform you? A. Well, I do not know as he did in so many words; but, of course, I knew most everything that was going on in the office from letters that I had written, and all such things as that.

Q. Did he tell you in what kind of money it was kept? A. No.

Q. Currency or gold? A. No. I will say, Mr. Mathews, that I wrote all the dismissals of these suits when the moneys were paid in, and I have written receipts in regard to them; so, of course, I would know about that.

THE CHAIRMAN: You knew that those moneys had been collected? A. Yes.

MR. DEVLIN: Did you know that all of the seventeen thousand odd dollars had been collected at different times? A. I did.

Q. Aggregating that amount of money? A. Yes.

Q. You say your impression was that it was kept in General Hart's safe at 230 Montgomery Street. From what source did you derive that impression? A. Well, in different ways—little matters that I do not know that I can hardly recall now.

Q. From conversations that you had with the Attorney-General? A. Well, from what I heard.

Q. Heard from whom? A. From the Attorney-General.

Q. Did he tell you in so many words that he kept that money at 230 Montgomery Street in his safe? A. I do not know that he did in so many words.

Q. How did you get that impression? A. Well, a lot of little things. I am with him every day, and there were a lot of little things that occurred in the office every day that would enable me to form that impression.

Q. Well, name a few of them. A. I do not know as I can give any particular occurrence.

Q. Do you mean that you learned it from the information that you got personally from the Attorney-General, or that you got from other sources? A. Well, if I learned it, I learned it from the office, and no place else but from the office. He did not come to me and say, "I have so much money in my safe at 230 Montgomery Street," but from things that he had said I could infer that.

Q. But what were they? A. I could not recall in so many words just what was said.

Q. He did not tell you directly that the money was there? A. No; I cannot say that he did tell me directly that the money was there.

Q. Have you got an office in San Francisco? A. Yes.

Q. There is no safe, I understand, in the office of the Attorney-General in the Supreme Court building? A. No, sir.

Q. Are you familiar with the Attorney-General's office at 230 Montgomery Street? A. I am somewhat familiar with it.

Q. Spend a good deal of time there? A. No, sir.

Q. Any portion of your time? A. I do not think I have been down there a half a dozen times in a year and a half or a year.

Q. Who has charge of the office in San Francisco at 230 Montgomery Street when Mr. Hart is not there? When the Attorney-General is not in San Francisco or there himself? A. I do not know anything about Mr. Hart's private business. I am always at 305 Larkin Street when I am in San Francisco.

Q. You have been in there? A. Oh, yes.

Q. Who did you find in charge there? A. Well, I found Mr. Nowlin.

Q. Who is he? A. He is a gentleman—lawyer.

Q. Clerk? A. Lawyer.

Q. Is his name on the door, or sign, or on the stairs? A. To my best recollection it is.

Q. Is he occupying General Hart's quarters? A. Yes.

Q. How many rooms are there? A. Two rooms and a very small room; although I understand that the small room has been taken out since. I have not been down there for some time.

Q. Where is the safe situated with reference to those two rooms? A. The safe is situated in what was formerly Mr. Hart's private room and what is the private room now, I presume, of the office.

Q. What kind of a safe is it? A. It is quite a large safe.

Q. Do you know the name of it? A. I think it is a Walz safe.

Q. How do you spell Mr. Nowlin's name? A. N-o-w-l-i-n.

Q. What are his initials? A. T. W.

Q. Do you know his residence in San Francisco? A. I do not.

Q. He is in charge, you say, of General Hart's office at 230 Montgomery Street? A. I know he is a member of the firm of Nowlin & Fassett. Mr. Fassett is there, too.

Q. What are his initials? A. J. F. Fassett.

Q. Do you know where he lives in San Francisco? A. Well, I was there once. I do not know where it is. I could not tell you where it is. I think it is on Lyon Street.

Q. Did you ever see any of this money that had been collected by General Hart that we are speaking of? A. I think I did; yes. About two weeks and a half ago I saw him have quite a lot of money.

Q. Where did you see it? A. In his possession.

Q. Well, where? A. At 305 Larkin Street. That was the day he deposited the money, I believe.

Q. How much money did he have? A. I do not know how much.

Q. What kind of money was it? A. What I saw was in bills.

Q. Currency? A. Yes.

Q. At 305 Larkin Street—in the Supreme Court building? A. He had it there then; yes.

Q. Were you in his office there when you saw it? A. Yes.

Q. Were you in the office before the Attorney-General came there; what day was that? A. It was the day that he made the deposit and got the certificate of deposit; it was turned into Court.

Q. What time in the day did you see this money? A. Oh, I don't know.

Q. Was it in the morning or afternoon? A. I could not state that.

Q. You do not know whether it was in the morning or afternoon? A. I paid no particular attention to it. I could not state whether it was in the morning or afternoon.

Q. Now, there had been considerable discussion about this matter, and you knew about it, did you not? A. I knew it, yes; but I had discussed it very little with Mr. Hart.

Q. Were you in the office before Mr. Hart came in? A. I do not know that. I come in the office sometimes before he does, and he gets there sometimes before I do.

Q. Don't you know, whether on this particular occasion, you came in the office before he did, or he came first? A. I do not.

Q. What is your recollection about it? A. I got at the office about ten minutes past nine.

Q. In what kind of shape, besides bills, did he have this money? Was it in a sack, or wallet, or what? A. I think it was just a lot of bills. I don't know whether there was a string around it, tied up, or not.

Q. How was it carried? A. How was he carrying it?

Q. Yes. A. Well, when I saw him he was just leaving the office.

Q. When he went out of the office, how did he wrap them up? In a bundle? A. I saw him put them in his inside pocket.

Q. How long had you and the Attorney-General been in the office that morning, or that day, before he left with those bills at the time you are speaking of now? A. Well, I had been in there all morning, I know.

Q. How long had he been in there? A. I do not know. I think he had been there—I don't know whether he had been in all morning or not. I do not know.

Q. Can you not say whether it was morning or afternoon? A. I cannot.

Q. You know it was during banking hours, don't you? A. Well, I guess it was during banking hours.

Q. Do you know how much of that was in currency? A. I do not.

Q. Was there any other kind of moneys besides currency? A. None that I saw.

Q. Did you have any conversation with him on the subject that morning? A. No, sir.

Q. Did he tell you where he got the money? A. No; he did not.

Q. Tell you what he was going to do with it? A. Well, I understood that the money was to be deposited and a certificate of deposit handed in Court; that is the way I understood it.

Q. From whom did you understand that? A. I guess I got that from him.

Q. Had you any conversation with him whatever about it? A. I presume we did have some.

Q. Well, what conversation did you have with him? A. Oh, I cannot give it, only in a general way.

Q. Well, give it in a general way. A. Well, I gathered that impression.

Q. You gathered the impression? Can't you remember the conversation you had with him? A. There were very few words passed.

Q. What did he say about it? A. I do not know. I cannot tell you what was said about it.

Q. What did he say about it? A. I cannot tell you that.

Q. How long did you talk with him? A. Well, it couldn't have been over a minute or a minute and a half or two minutes.

Q. Did he tell you what bank he was going to deposit it in? A. No, sir.

Q. Was he excited? A. No, sir.

Q. Was he calm? A. Yes, sir.

Q. And collected? A. Yes, sir.

Q. Did he say, "Here is the money," or anything of that kind, showing that he had it? A. No. I believe his words were: "This is part of the money."

Q. "This is part of the money?" A. Yes, sir.

Q. Did he say where the other part was? A. He did not.

Q. Did you ask him? A. I did not.

Q. How long—or, with reference to the time that this suit was brought by him, when did this transaction occur? Before or after, or how long before or after? A. Well, it was after suit was brought. I think it was—

Q. After suit was brought? A. It seems to me it was within a day or two of the time that the trial was to take place.

Q. Did General Hart say anything to you, in the preparation of his report, about this money? A. No, sir.

Q. Was the matter discussed between you and him in any shape whatever? A. Not in regard to the report, I do not think.

Q. Did he leave to you the making up as to what his docket showed, or did he attend to that himself? A. I attended to that mostly myself. I did most of that work.

Q. Why didn't you put in the report the collection and the amount of this money? A. I think I can explain that to some extent, and it was this: So far as I could find General Johnson's docket never showed anything in reference to those cases. Those cases were brought in 1884, years before we went into the office, and, so far as I could find, there was nothing in the former docket about those cases. I have never seen it if there is.

THE CHAIRMAN: Would it make any difference, from the fact that it was only money collected during this term? There had been none collected during the previous terms of these moneys, as I understand it. A. No, but the cases should have been in the docket, I should think.

MR. DEVLIN: What did you undertake to do? Did you undertake to give to the Governor, and through him to the Legislature, all the transactions of your office during your term of office? A. While we were in office I think we did.

Q. And you knew that this money had been collected during your term of office, did you not? A. Yes, I think we did.

Q. Why did you not make a report of it to the Governor?

MR. STONE: I suggest, Mr. Chairman, that he was not making the report; that the Attorney-General of this State was making the report.

THE CHAIRMAN: He says he made it. A. I took it from the docket; I copied the dockets and nothing else.

MR. STONE: All he did was mechanical. I do not understand that Mr. Betz knows anything about the proceedings, or what is right or what is wrong, but has simply, under the Attorney-General, certain work to do, and does it mechanically, and as a clerk. That is, I understand, your position? A. That is all; I copied the docket.

THE CHAIRMAN: I thought he was originating it or making it up?

THE WITNESS: Oh, no; I copied the docket, is all.

MR. DEVLIN: You mean to say that you did the mechanical work copying the entries that appeared upon the docket? A. Yes, sir.

Q. Did you make any copies whatever in relation to those suits? A. I do not know; I have no recollection, if I did.

Q. You do not recollect? A. I do not know. I have not looked over the docket to see whether they are in there or not. They may be in there; I do not know.

Q. Did you submit your work to General Hart after you got through—that portion of it? A. Well, I guess he saw the proof when it came in—while it was being printed.

Q. Well, you say you guess he did. Did he or did he not?

MR. LAYSON: I read the proof myself.

A. Well, I read part of the proof myself. I don't know whether he looked over the proof or not. I think he was in the office part of the time.

MR. DEVLIN: Are there any books kept in the office showing the financial transactions of the office, outside of the docket, of money received and money paid out? A. I do not keep any.

Q. Who does keep it? A. I do not know of any kept.

Q. Have you got any book that shows the amount of costs that you pay out in a case? A. If we pay out costs the docket itself will show that.

Q. It is all entered on the docket, is it? A. It is generally; yes.

Q. Have you any books, outside of the docket, that show any of the transactions, financial or otherwise, of that office? A. Well, I missed your question, because I was going to say something else. The costs do not amount to a great deal, because most of the work of that character is—for instance, when we start a case, the State is not required to pay any money. The State is not required to put up any money or deposit any money with the Clerk.

Q. Have you collected any money for the State of California in addition to what you have collected in these Harbor Commissioner suits in the last two years? A. I have not.

Q. Well, I mean, has your office? A. I think so.

Q. In what books are those collections entered? A. Well, I think those collections have been made since the report was sent in.

Q. What books are they entered in, I asked you? Don't you understand the question? I asked you what books they are entered in? A. I presume they are entered in the dockets, or will be entered in the dockets.

Q. Do you make the entries? A. I told you I do not keep the dockets myself.

Q. Who does? Miss Hedden, you say, kept it? A. I said Miss Hedden kept the docket.

Q. Were you present in San Francisco, in Judge Levy's Court, when Mr. Hart made a statement? A. I was.

Q. Did you take it down in shorthand? A. Oh, I took a portion of it down.

Q. Did you afterwards prepare an article for the "Post"? A. I did not.

Q. Who did? A. I do not know.

Q. It was not taken from your notes? A. No, sir; I never transcribed one of my notes.

THE CHAIRMAN: When Mr. Leake questioned you about the collection of that money, did you know that he had been sent to you by authority of the committee of the Assembly? A. I do not think I ever spoke a word with Mr. Leake.

Q. His recollection—well, we will let him state it. A. Mr. Leake is thinking of some one else; not me.

MR. STONE: Mr. Betz, as I understand it, you occupy the position of stenographer, and you attend to all of the work of the office that consists of official business of the Attorney-General with any of the public officers? A. Yes; in that way.

Q. And in any matter of suits you would simply take down stenographically what the Attorney-General might say or direct? A. Yes.

Q. You have acted as clerk, and have been somewhat, I presume, in the light of a confidential man in the office, so far as taking down work is concerned? A. I think so. I probably have.

Q. During such time, have you ever been in the office at 230—I think it is Montgomery Street, with the Attorney-General, when the safe was open? A. I have.

Q. How long ago? A. Oh, I have been in there several different times when the safe was opened.

Q. Now, during the times when you have been in the office, and the safe was open, have you had occasion, or did you look into the safe? A. I was right there by the safe when the safe was opened.

Q. Right by the safe when he opened it? A. Yes, sir.

Q. Did you look into the safe? A. Well, I think I did. I remember on one occasion going into the safe myself looking for some papers.

Q. Did you see any money, in coin or greenbacks, in there at that time? A. I did.

Q. A large or small amount? A. Well, of course I could not make any estimate of the amount. I saw greenbacks or gold notes—I don't know whether they were greenbacks or gold notes, I did not pick them up and examine them—and also gold coin.

Q. Do you remember, Mr. Betz, upon one occasion being in Sacramento with the Attorney-General—I think it was in Sacramento—when he spoke to you, and said that he feared that he had not locked the safe, and that you telegraph to see; that there was a large amount of money in there, and to be sure and have whoever it is up there lock the safe? A. I recall that circumstance. I think we came to Sacramento here, and he made the remark that he thought he might possibly have forgotten to close that safe, and that he had a large amount of money in there, and he asked me to telegraph to Mr. Nowlin. But whether he changed his mind and told me not to do so afterwards, I do not know; I cannot recall that.

Q. You remember about how long ago it was, Mr. Betz, that you

looked in the safe and saw that money? A. Well, I think I saw that—I think it is within a year ago when I saw that money.

Q. Within a year that you saw the money? A. Yes, sir; and I had seen money before that in the safe.

Q. In apparently large amounts? A. Well, yes.

Q. Of course you could not judge exactly how much? A. Of course not.

MR. DEVLIN: How many times did you see General Hart's safe, in his office at 230 Montgomery Street, in the last two years, open? A. Oh, I have seen it, because before we opened our office at 305 Larkin Street, the San Francisco office we kept at 230 Montgomery Street, and of course I saw the safe many times.

Q. How many times did you see the safe open with money or greenbacks in it? A. You mean since two years ago?

Q. Yes. A. Oh, I suppose I have seen it—with money in?

Q. Yes. A. Well, I know of three or four occasions, anyway.

Q. Whereabouts was the money situated when the door was open? On one of those little shelves? A. There was a little drawer in there—I suppose you might call it a cash drawer—to the best of my recollection.

Q. What kind of a drawer? Was it a steel drawer? A. Well, I do not know.

Q. Does it take a key to unlock it? A. I believe it does. I don't know whether it takes a key to unlock that drawer. I know there is an inner door to the safe, and it takes a key to unlock that.

Q. When the inner door to the safe is open, what is there inside of the safe? A. I suppose like safes are fixed.

Q. Safes are fixed different ways. I am asking you where you saw this money; where was this money situated? What kind of a drawer? A. I think when I saw the money the last time, Mr. Hart was looking for something in the safe, and I think the money was then on the floor just in front of the safe.

Q. The money was on the floor in front of the safe? A. Yes.

Q. What kind of money was it? A. Well, I saw some greenbacks—I don't know whether they were greenbacks or gold notes.

Q. Some gold coin? A. Also some gold coin.

Q. How much gold coin? A. I do not know. I was just simply standing there, and I glanced at it.

Q. I am asking you what you saw. How much did you see? A. I couldn't make an estimate of how much. There was some coin there in a bag. I judged it to be gold coin. It was tied up.

Q. How large was the bag? A. Oh, I do not know; I suppose something like that [indicating].

Q. Then you saw some loose gold coin? A. Some loose gold coin.

Q. Was there some loose gold coin on the floor, too? A. No, sir; in a tin box. I do not know whether it was a drawer or tin box.

Q. Well, the greenbacks were on the floor there, were they not? A. No; I think they were in the drawer.

Q. You said you saw them on the floor. A. I mean the box, or whatever they were in, was on the floor. I did not mean it was scattered on the floor. It was in a box or some receptacle of some kind; a tin box, or else a drawer of some kind.

Q. How were the greenbacks tied together? A. That I do not recollect.

Q. Who else besides you and General Hart were in the room? A. General Hart was in there. I do not recall any one else.

Q. How many other times did you see this money? A. Well, I saw the money; I don't know that it was this money. I say I saw money.

Q. How many other times have you seen any moneys in the safe? A. Oh, I have seen moneys there many times.

Q. Was there any mark or designation upon the bag of coin? A. I did not examine to see whether there was or not.

Q. Well, did you see any? A. I just glanced at it.

Q. Did you see any mark or designation upon that bag of gold coin? A. Not to my recollection.

Q. Did you see any mark or designation upon these greenbacks in any shape or form? A. I do not know.

Q. Were the greenbacks tied together? A. I do not recall that.

Q. Were they lying loose? A. I think they were in a bundle.

Q. Were they lying out flat, or were they rolled up in a roll? A. My recollection is they were lying just as you would lay a lot of greenbacks together.

Q. No wrappers around them? A. There might have been.

Q. Did you see any wrappers? A. I do not recollect seeing any. There might have been a small one.

Q. Was there anything to call your attention to the fact that that money belonged to the State of California? A. Not at that time.

Q. What? A. There was not at that time.

Q. Was there at any time? A. As I said before, I had at different times, an impression that the money was—

Q. (Interrupting.) I am asking you if there was anything around that money, or in with it, to indicate that it belonged to the State of California? A. Not at the time I saw it.

Q. At any time that you saw it was there? A. Oh, well, not that particular money. I could not say whether that particular money belonged to the State, or who it belonged to.

Q. So far as you saw, you do not know whether that money belonged to General Hart personally, or John Jones, or the State of California? A. I did not see anything that would—

Q. You did not see any mark, or designation, or paper showing who it belonged to? A. I noticed none.

Q. What time was this—about how long ago? A. Well, I judge that was somewhere about a year ago.

Q. Did you ever see any money before that in General Hart's safe when it was open? A. Yes, many times.

Q. How many times before that? A. I suppose perhaps two or three hundred times.

Q. What kind of money did you see before that in General Hart's safe? A. Gold and currency.

Q. In what shape was the gold kept? A. I have seen gold in his safe loose, and I have seen bags of money. Of course I supposed it was gold. I did not open the bags to see what there was in them. I supposed it was gold.

Q. You saw the gold loose in what shape? A. To the best of my recollection there was a little drawer or box or something that the money was in. It was not scattered over the floor in the safe.

Q. Have you seen money in his safe since this time that you speak of

when you saw this money on the floor? A. I do not know that I have been down to that office with Mr. Hart for a year.

Q. All the times that you have seen Mr. Hart's safe open, did you ever see any designation, or mark, or tag, or anything to indicate that the money belonged to any other person than General Hart? A. I never examined it closely enough to see. If there was any on them, it would have had to have been in very large letters, or whatever it was, to attract my attention.

[The reporter was requested to read the last question and answer, and did so.]

Q. The question is, did you see it or did you not see it? A. I told you before that I saw nothing there to indicate it.

Q. At any time that you visited General Hart's safe you saw nothing that indicated— A. I was not near enough to the safe.

Q. I am not asking you about that. I am asking you about the fact. I am asking you whether you did or did not? A. I have answered that three or four times, that I did not.

Q. Are you familiar with greenbacks—how many greenbacks it takes to make a thousand dollars? A. No, sir.

Q. Did you see the denomination of those greenbacks? A. I have never had the pleasure of handling much greenbacks.

Q. Did you see the denomination of those greenbacks? A. I did not.

Q. Can you tell the committee what any greenback, or how much any greenback, was? A. I cannot.

Q. Did any conversation occur between you and General Hart, on that occasion, as to whom the money belonged? A. No, sir; not a word.

Q. That is the office occupied by Nowlin & Fassett, is it, in which you saw this safe? A. Yes.

Q. Have they access to the safe, also? A. I do not know. I believe not.

Q. Mr. Stone asked you a question about telegraphing down to have the safe locked. To whom were you to telegraph? A. I was to telegraph to Mr. Nowlin.

Q. You were to telegraph to Mr. Nowlin to lock the safe? A. I do not know if it was—

MR. STONE: To see if it was locked? A. Mr. Hart thought perhaps he had forgotten to close it. As I understand the safe, you have only to push it and close it.

MR. DEVLIN: Did you have the combination to the safe? A. I did not.

Q. Do you know anybody else besides General Hart, that had the combination or knew about it? A. I do not.

Q. When was the last time that you saw any money in General Hart's safe in San Francisco? A. I told you, I think, about a year ago.

Q. That was the last time? A. Of course when you speak of the office, there is a safe in the other office, and I have seen money in there more recently.

Q. How recent? A. That was not Mr. Hart's safe.

Q. Whose safe was that? A. It was the safe of Nowlin & Fassett.

Q. How long ago is it since you have seen any money in what is known as General Hart's safe? A. About a year ago.

Q. You have not seen any money in there since? A. I have not been with Mr. Hart—we have not been there together, I do not think, any time since.

Q. Now, can you give to the committee any idea of the size of this drawer—how long is it? A. Well, now, I could not state. I do not suppose I could; it is not very large and not very small.

Q. It is what is ordinarily called a money drawer, is it not? Is it made of iron or wood? A. I do not think I ever touched the drawer. Whenever I have seen the money, I have always been some distance from it. I have never been right close to it. I did not walk up to see what was there. I remained where I was, generally sitting on the other side of the table probably—the other side of the desk.

E. E. LEAKE.

Sworn.

THE CHAIRMAN: Mr. Leake, were you sent by the Committee of Ways and Means to the Attorney-General's office to ascertain what had become of the money collected by Messrs. Miller & Langhorne. A. Yes.

Q. Of whom did you make the inquiry? A. When I first went into the office, I met a gentleman that I did not know. My impression is that it was the gentleman who was here on the stand (I never had met him before), and I inquired for Mr. Layson, and, I think, I made an inquiry for General Hart. He told me Mr. Layson was not in the office; and, I think, I asked him the question if he knew anything about the money. I had the book in my hand—

Q. You asked whom? A. This gentleman, whom I met in the first room, I think it is (I do not know how the room lays from here). I went into one of the rooms, and I met a gentleman whom I did not know (I think it is this gentleman, but I am not sure about it), and I asked for Mr. Layson, and he said he was not in; and, I think, I asked for General Hart, also. And I had the book in my hand, and I asked in reference to it. My impression is that he told me he did not know anything about it, and referred me to the next room. I went into the next room, and Mr. Oregon Sanders was in there, and I asked him, and he said he did not know anything about it at all; that I would have to inquire from Mr. Hart or from Mr. Layson. And I was there again the next day, and Mr. Sanders was still in charge, and he said he did not know anything about it.

Q. Well, your impression is, that the first person you saw was Mr. Betz. Is that the gentleman's name? A. I think so. I never saw him before until just now in this chair, but he seems to me to be the same gentleman. I did not ask him his name. He is a man that I never met before.

Q. That person, whoever it was, told you that he did not know anything about it? A. Yes, and referred me to the next room. Mr. Chairman, I would like to state also while I am on the stand, that, in some way, the impression has gone out and several have asked me about it, that I have stated that Mr. Layson had said to me that he did not know anything about the money. That was not correct. I did not ask Mr. Layson, and did not meet him in the office at all, and he said nothing to me about it. On every occasion that I have visited the office

and found Mr. Layson there, he has always been very willing so far as I could learn, to give me any information that I asked.

Q. Well, I did not know when you reported to the committee, who you had seen; our general information was that you had got no satisfaction. A. My understanding was that on that day Mr. Oregon Sanders was in charge of the office. I know I went back the next day and he was still there, and no one else, and Mr. Sanders told me he did not know anything about it.

Q. Neither did any of the other clerks? A. No, sir. I went first to the Controller, and from there to the Attorney-General's office.

THE CHAIRMAN: Well, it must be a case of mistaken identity. The witness thinks it was Mr. Betz, and that gentleman says it was not.

MR. STONE: You could be mistaken about it being Mr. Betz? A. I might be; I never saw the gentleman before that day until I came here.

Q. Then you saw him but once? A. Only once. The gentleman was sitting at a table, I know.

Q. The gentleman, whoever it was, said he knew nothing about it, and said you would have to see the gentleman in the next room? A. Yes, sir. I had the book in my hand, and said I had been sent by the committee to learn something about this, and he said, "I don't know anything about it," and he referred me to the next room.

Q. It might have been anybody that was sitting there that would say that? A. The gentleman was sitting there, writing. To the best of my recollection, it was this man, but I would not say positively. I never met him before.

Q. Do you know anything about the date, Mr. Leake? A. No; I do not—without referring to my minutes.

MR. STONE: I will state, Mr. Chairman, that on the date that Mr. Leake called Mr. Betz was in San Francisco. It is evidently a mistake.

THE WITNESS: There are two rooms there, Mr. Stone, and I went into one of them and there was just one gentleman who was sitting there writing. I took him to be one of the deputies or clerks. Without taking any particular notice at the time, I know I inquired for Mr. Layson because I generally got what information I wanted from him, and my recollection is, I inquired for Mr. Hart.

Q. And what was the answer that was made as to General Hart himself? A. Well, he told me he was not there.

Q. Not there? A. That is my recollection of it now. He referred me to the next room and I went in there and Mr. Sanders was in charge.

MR. STONE: If there is any question about it being Mr. Betz, we can show you that Mr. Betz was in San Francisco.

THE CHAIRMAN: I think there is no question about that now. We wanted to show that the information that he got from that office was, that they did not know anything about it.

JOHN GARBER.

Sworn.

MR. DEVLIN: Mr. Garber, you are a member of the firm of Garber, Boalt & Bishop? A. Yes.

Q. You know what this committee is investigating, I suppose; about

money collected by General Hart in what is known as the Harbor Commissioner suits, what he has done with the money, and where it has been? A. I so understand it.

Q. I will ask you this question: If you or your firm advanced to General Hart, in the month of February, or month of January in this year, any considerable sum of money, by loan or otherwise? A. Not that I know of. I have never heard of anything of the kind.

Q. Who is the chief clerk of your firm? A. Mr. Hoefler.

Q. You have no knowledge on the subject? A. None whatever. I have heard nothing of the kind, and know nothing of the kind. If there be such a loan, it would be a matter of great surprise to me.

Q. You think you would know something about it? A. Well, no, I do not know about that either, because I have very little to do with the detail work of our office.

Q. Who attends to that work? A. Mr. Bishop; my partner is, I might say, the executive man of our firm, and attends to the business—that portion of the firm business. Mr. Bishop has been sick, I think, for some time. I do not think I have seen him for six weeks, or two months.

Q. He would not be able to come to Sacramento? A. He has not been to the office and, as I understand, has been in bed most of the time. I have not seen him—I think it is—for over a month.

THE CHAIRMAN: Would it be likely that a loan of that kind would be made without your knowledge? A. Well, I should think not. Although, if there were money there, Mr. Bishop would do what he pleased with it, because I have absolute and unlimited confidence in Mr. Bishop, and any money that belonged to the firm, he would do just what he pleased with it. He would use it for his own purposes or any way he saw fit. There would be no questions asked me about that.

Q. Would the clerk, Mr. Hoefler, know anything about it necessarily? A. Well, I do not know. If Mr. Bishop used him to draw the check, it might be so. My impression is, and I am not positive about that either, that all the money of our firm is in Mr. Bishop's private account. I really do not know whether it is so or not, but I know when I get any money, Mr. Bishop gives me a check for it.

Q. Where is Mr. Bishop's account kept? A. I would not undertake to say, though I have had a good many checks from him. I think it is the Anglo-Californian, but then I am not sure about that.

Q. I will ask you one question, Mr. Garber; it might facilitate the inquiry and might be a convenience to Mr. Bishop. In what shape can this committee get a statement from Mr. Bishop? Can they go to his house? Is he able to hear anybody, or would it be satisfactory to the Chairman to go down there and take his statement?

MR. STONE: His unsworn statement would be acceptable.

MR. DEVLIN: Mr. Bishop would make a statement, would he? A. I imagine so, at once. Mr. Bishop is not in a condition to incapacitate him from doing business. He has been doing business all the time; lying in bed with two or three typewriters at work all the time.

Q. What is his address in San Francisco, Mr. Garber? A. It is in the directory. It is on Washington Street, I think. I know of no pecuniary transaction between our firm and General Hart. There might have been such in connection with the Blythe case; if so, I would have nothing to do with that. That would be between Mr.

Bishop and Judge Boalt and Mr. Hart individually. I would have nothing to do with that. So far as I am concerned, I never had a dollar or a cent pecuniary transaction with Mr. Hart in my life.

The committee adjourned to meet at 9 o'clock to-day; at which time a further continuance was had until to-morrow at 2 P. M.

WEDNESDAY, March 1, 1893—2 o'clock P. M.

L. M. HOEFLEB.

Sworn.

MR. DEVLIN: You live in San Francisco? A. I do.

Q. And are and have been for some time the chief clerk of the firm of Garber, Boalt & Bishop? A. I have.

Q. I suppose you know what this committee is investigating; they are investigating the receipt of certain moneys by General Hart and whether they were kept safely or not, and the committee desire to know from you if you have any knowledge or any information as to whether General Hart, during the last two months, received any money from your firm, or any member thereof, or any person that you have any knowledge of, for the purpose of paying any portion of this money collected in these suits against the Harbor Commissioners? A. I know that he has not.

Q. You know that he has not? A. Yes, sir. I have charge of the bank account, of the check books and of the bank book; collect all moneys and pay out all moneys. And if any moneys had been paid out by any one of us to General Hart, why I would have known it.

Q. If I understand you correctly, you mean to say that so far as you know, and you do know, no money has been advanced to him or to any other person for his use or his benefit in the last five or six or seven months? A. Yes, sir.

Q. Either from the firm of Garber, Boalt & Bishop, or any member thereof, or from any other person that you know of? A. Yes, sir.

Q. The committee have had a desire to examine Mr. Bishop. Will you state to the committee whether you were familiar enough with Mr. Bishop's affairs to be able to answer the question as to whether or not Mr. Bishop has advanced any money on his own account? A. Yes, sir. I attend to all of Mr. Bishop's personal affairs; and during the last six or seven weeks he has been confined to his house and I have drawn all checks myself, paid out all money for him. Whenever he wants any money I draw it out of the bank for him. And I know that no money has been drawn for any such purpose.

Q. Is it the agreement that you shall draw all the checks of Mr. Bishop or, if he wants to draw a check himself, could he do so? A. He could. But it would have to go in the regular way and I would receive the check when the balance was made up and the bank book returned.

Q. When you say that, you are speaking of that in which you are in a position to know? A. I am, sir.

Q. It would not have been possible for Mr. Bishop to have advanced Mr. Hart any money without your knowledge, in the last three or four months? A. I think it would be quite impossible, Mr. Devlin.

Q. What is Mr. Bishop's condition—physical condition? A. Well, he is improving slowly.

Q. Confined to his house, is he? A. He is confined to his house. He is taking the rest cure. Not dangerously ill, but he has been confined to his house for the last five or six weeks.

Q. Is he able to attend to business or meet any one that wants to see him? A. Yes, sir; keeps his hand on the business of the office right along.

Q. You can furnish the clerk with his address, can you? A. No. 2309 Washington Street.

MR. STONE: I desire to state to this committee that since the meeting yesterday afternoon I have caused the dockets to be examined carefully back as far as 1880, when Attorney-General Marshall was Attorney-General and in office, and that no record appears of any kind regarding these suits. And it is supposed to be from the theory that they have been in charge during that entire time of private counsel. None of the Attorneys-General for the last three terms have any record of that. And if any member of the committee would like to verify that the books are in a condition so that they can see that inside of five minutes. The records are all open to their inspection.

JOHN BOGGS.

Sworn.

MR. DEVLIN: Mr. Boggs, you are one of the members of the State Agricultural Society? A. Yes, sir.

Q. You remember a suit was brought some time ago by some individuals against the Directors for injuries occasioned by the breaking of a stand at Agricultural Park? A. Yes, sir; there was such a suit.

Q. Did you have any conversation with Attorney-General Hart about it? A. Yes, sir.

Q. Will you please relate to the committee what that conversation was? A. About the time the complaint was filed the Board met and we discussed the matter and it was considered a State matter, and that the Attorney-General would take charge of it. I do not know that I was appointed a committee, but I was requested, as I was going to San Francisco where Mr. Hart was, to confer with him, or to speak to him about it; and I met him and told him that there was such a suit. He said he knew there was and very promptly said he would attend to it. And I told him that it lacked only a few days before an answer had to be filed, before the time would expire. He said that he knew that and that he had notified his office to prepare and file an answer, and said that he would look after it. He was very prompt in it and agreed to do so.

Q. In what capacity did you speak to him? As the private attorney or as the Attorney-General of the State of California? A. Oh, as Attorney-General.

Q. Did he deal with you in that capacity in such conversations as you had with him? A. I think so.

Q. He told you he was familiar with the case, and would attend to it? A. He told me he had looked up the case, or that his attention had been called to it through some reports in the papers, or something. He

knew that such a suit was brought, and that he would have the answer filed in proper time.

Q. Now state what other business you had with him, and what became of the case? A. Then there was a committee appointed by the Board, consisting of the President of it, Mr. Cox, and, I think, the Sacramento members, who were to attend to the case and consult with the Attorney-General about it.

Q. Did you have any further conversation yourself with the Attorney-General about the case? A. No, sir—well, he told me that he would have it attended to. After that I did not see him any more, I did not see the Attorney-General.

THE CHAIRMAN: Well, did he attend to it? A. His deputy, Mr. Layson, attended to it.

MR. DEVLIN: So far as your personal knowledge goes, that is as much as you had to do with it? A. Yes, sir.

Q. What committee dealt with the Attorney-General or Mr. Layson after you had gotten through?

THE CHAIRMAN: It was the Executive Committee, I suppose? A. Yes; I think it was the Executive Committee. The Executive Committee of the State Board of Agriculture, or the Sacramento delegation. Well, I do not know which it was. It was either the Executive Committee or the Sacramento members.

MR. DEVLIN: Did your Executive Committee make a report to the Board in session about what they had done? A. Yes, sir.

Q. A verbal report? A. I suppose so.

Q. I suppose it is proper information. What did the committee report? A. Well, we talked of the matter, and Mr. Cox reported—he was President—that they had consulted with Mr. Layson, the Deputy Attorney-General, and he said that he was attending to it, that he had filed an answer. Mr. Cox said that he asked him if he wanted any assistance; if he did, we would employ additional counsel to assist him; and he said he had already employed additional counsel on behalf of the Board. And the case was brought to trial, and then the Board, thinking it was an important case, employed Gen. A. L. Hart to assist. And the case was brought to trial, and some evidence taken, and the counsel on behalf of the Board, Mr. Layson and Mr. Hart, asked for a nonsuit and it was granted.

Q. State whether there were any bills afterwards brought in by Mr. Layson to the Board? A. Well, at our last meeting of the Board of Agriculture there was a bill presented to the Board for \$2,500 for attorneys' fees by Layson & Brusie.

Q. Was the bill paid? A. Not entirely. The Board decided to pay Mr. Brusie \$500. That amount was allowed him. I do not know that he has received it. And we discussed the matter, and we thought that Mr. Layson was acting in behalf of the State and for Mr. Hart, and was not entitled to anything, and we did not allow the bill, only \$500, and that was specially for Mr. Brusie.

E. P. COLGAN.

Recalled.

MR. DEVLIN: Mr. Colgan, the committee desires some information from you as to the manner in which bills against the funds for the payment of expenses of the Attorney-General's office, or for the payment of the expenses in cases in which the State is interested or is a party, or for the payment of special counsel employed by the Attorney-General, are paid. A. The manner in which they are paid?

Q. Yes; and the system of bookkeeping that will show their payments? A. The claims are first presented to the Board of Examiners, approved by them, and transmitted to the Controller's office, and warrants are drawn there.

Q. Do you keep upon your books an account with each particular fund—each particular appropriation? A. Yes, sir.

Q. Is there any money paid out by the Attorney-General himself, that he can draw or pay, without being first passed upon by the Board of Examiners? A. No. All claims go through the Board of Examiners first.

Q. Is he authorized to draw upon the Attorney-General's Fund? A. Not without the approval of the Board.

Q. That is, approval—you mean as to the particular items? A. Well, as to the payment. Of course the expenditures are always made before the claims are presented. That is, the claims are presented to the Board of Examiners and approved by them, and warrants drawn in payments of money supposed to be, or known to be, paid for the interest of the State.

Q. As I understand you, there is a fund upon which the Attorney-General can make payment from individually, first, and then present the claims to the Board of Examiners and get the money on them. Is that it? A. Well, he has no assurance of it until the Board of Examiners approve of it.

Q. Is there such a course pursued as that? A. The contingent fund of the Attorney-General's office is the same as all the State officers have. We all have a contingent fund.

Q. Then the items and the accounts presented to the Board of Examiners show the amounts, and the persons and the services are specified? A. Yes.

Q. Then, upon the allowance of that claim by the Board of Examiners, in whose favor is the warrant drawn? A. Well, generally in favor of the parties.

Q. Then, how does the Attorney-General get it? A. The Attorney-General does not get it.

Q. If he has paid it out, how does he get it? A. If he had paid it out, then it is drawn in favor of him, to reimburse him for the payment.

Q. Then he puts in a personal claim? A. Yes; his postage or anything of that kind is presented, with itemized statements.

Q. Will you please examine this account, Mr. Colgan, now shown you, and state to the committee against which fund each of those items was, and out of which fund paid? A. This is the same document that you handed me the other day that I did not want to testify to without taking the vouchers on file, because I did not want to make any mistake on it; but wherever you see the name, "W. H. H. Hart, costs serving orders,

summons, etc.," that was drawn in favor of Mr. Hart. Next, Mr. A. R. Cotton—that is drawn in favor of Mr. Cotton. The names appearing here are the parties who received the money.

MR. KAHN: One thing I want to know, Mr. Colgan, and that is this: Whether these amounts were drawn out of the fund for paying the expenses of suit; that is, the \$6,000 allowed by the State? A. I think that all of these are for costs and expenses of suit. They are drawn out of an appropriation for costs and expenses of suits where the State is interested.

MR. DEVLIN: What Mr. Kahn desires to get at is this: Are all the items that appear upon that sheet of paper that you have, drawn upon special appropriations for the Attorney-General's office, or out of a special fund? A. They are drawn out of an appropriation made for costs and expenses of suits; that is all. That is, I think all of these are. Of course there is one item in that, the Sugar Refinery case, where there were quite a number of parties interested, and of course the warrants were drawn in favor of the individuals, as approved by the Board of Examiners.

Q. Would you be authorized, I will ask you, to draw any warrant for any of those services unless a special appropriation had been made therefor? A. No, sir.

Q. You could not, if you wanted to, draw it out of the General Fund? A. No, sir; we could not do that.

Q. Then you keep upon your books of the office an account with each of the funds, and when a fund is exhausted, you cease to draw further warrants on that fund? A. Yes; that is right.

Q. An inspection of that book at any time would show the amount of money in the State Treasury to the credit of that particular appropriation by drawing a balance? A. Yes. It is virtually the same as the fund.

Q. I am familiar with it, but I want the committee to understand it. Do you know whether or not the Attorney-General keeps any book or any record showing the same entries which, by comparison with your books, would show also the condition of those appropriations? A. No; I do not know that he does.

Q. You never have been called upon, have you, to compare your entries with him, or never had occasion to inquire and ascertain whether he kept such a book? A. No, sir.

Committee adjourned to call of the Chair.

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TESTIMONY

TAKEN BEFORE

Select Committee in the Matter of In-
vestigation of A. Bretz.

TESTIMONY

TAKEN BEFORE

Select Committee in the Matter of Investigation of A. Bretz.

Pursuant to the following resolution:

Resolved, That a select committee of seven be appointed by the Speaker of the Assembly to fully investigate the charge and words used by Assemblyman Bretz in the Joint Assembly for the election of United States Senator, on January 18, 1893, wherein Mr. Bretz used the words in said Joint Assembly as follows, to wit:

"We believe that this change was brought about by the corrupt use of money, and we believe that Marion Cannon is the negotiator."

"And that said committee is fully empowered to investigate said charge, to send for persons and papers, and is required to report to the Assembly the result of its investigation."

"Adopted."

COMMITTEE—Messrs. Shanahan, Alford, Pueschel, Mathews of Tehama, Kahn, Vann, and Perkins.

TESTIMONY OF STEPHEN M. WHITE.

Sworn.

MR. SHANAHAN: Now, I make the statement that if there is any person present that desires to question Mr. White on the part of Mr. Bretz, he may do so.

MR. CATOR: I desire to state my position in appearing as counsel for Mr. Bretz. Of course the question of propriety in my appearing as counsel, having been a candidate for United States Senator myself, in opposition, among others, to my illustrious friend who has obtained it, and against whom I have not uttered a word, I will say that I have counseled with eminent lawyers, who are men of distinction, and I stated to them that under the circumstances, as a member of the People's party was on trial by the action of the Assembly, and was a poor man without counsel, whether there was anything improper in my appearing as his counsel, and they have advised me unanimously that it was not improper. I desire to state that, with respect to Senator White, I do not desire to ask him any questions.

MR. SHANAHAN: Mr. Cator, you do not desire to ask Senator White any questions?

MR. CATOR: No, sir.

MR. SHANAHAN: Is there any member of the committee who desires to ask any questions?

MR. SHANAHAN: With regard to the charges made on the floor of the Joint Assembly yesterday—I presume that you heard of those charges, Senator White? A. I heard of them—I have heard of them, but I was not present.

Q. Have you any statement that you wish to make in regard to that matter? A. Well, little except what I publicly asserted before the Joint Assembly. Perhaps it might be proper for me to say that the Mr. Kerns whose name has been mentioned in this connection has been an acquaintance and friend of mine for a great number of years. We have often—how often I cannot now state—been delegates to the same Democratic Convention in Los Angeles. I urged him to be a candidate for the Legislature of this State; I advocated his nomination by the Democratic party, and I believe he would not have been nominated by the Democratic party of Los Angeles County if it had not been for my advocacy. His constituency is largely Democratic. While I cannot say that Mr. Kerns ever pledged himself to support me, I never doubted that he would do so, for the same reason that I have not doubted the support of any other gentleman who has known me for a long time and whose political affiliations have been similar to my own. I saw no positive statement of his standing until I read it in the Stockton "Mail"—an interview which is contained in that paper of the 17th of December last, and which I have in my hand, and if it is of any value in the progress of this investigation it is at the disposal of the committee, and I will give you a copy of it. A number of interviews—that is, they are not exactly interviews—the report published consists of responses to certain interrogatories which the editor of that paper appears to have forwarded. I refer especially to this portion, which I will read, and which is Mr. Kerns' interviews. The questions are on page two and the answers upon page three of the Stockton "Mail," Saturday, December 18, 1892.

"INTERROGATORY 1. Is Stephen M. White the logical candidate in the sense that his election should follow as a sequence of the campaign? A. That he is the logical candidate was so generally conceded before the election that the name of no other Democrat was ever prominently mentioned. The issue was squarely presented before the people. The issue of electing United States Senators by a direct vote of the people was forced to the front by Stephen M. White.

"INTERROGATORY 2. Is he qualified in a high degree for the place? A. Preëminently so. He is a man of merit and ability of a high order, and he is in touch with the best interests of the people.

"INTERROGATORY 3. Are his claims upon the party equal to those of any other aspirant? A. Mr. White's party services have been continuous and valuable, the most brilliant of the series being his celebrated debate with M. M. Estec. His convincing arguments were largely instrumental in the great victory which has placed California in the list of Democratic States. I do not think my words do the subject half justice. I believe Mr. White will get there all right."

Apart from the conclusion, I think the gentleman exaggerates somewhat my qualifications. I might say in addition, perhaps, that I have had some conversations with Mr. Kerns, which have not been different from those I have had with members of my own party. I do not know

any man in the Democratic party of this State, or out of it, who has been more friendly to me than T. J. Kerns, and none, in my opinion, is an honest or a fairer man. I might add that the only influence that I heard of being exerted upon Mr. Kerns was that derived from his personal friendship. I have never even gone to the extent of telling him that I would favor a friend of his for the smallest office in the United States. He has not received the consideration of my support for a neighbor, a friend, an attaché, or a person to whom he thought he was under any obligation. In other words, he has asked me for nothing, and has received nothing, and I have promised nothing.

MR. SHANAHAN: Do you know of an expenditure of any money by yourself, or on your part, or by any friend in behalf of your candidacy, either to T. J. Kerns or any one else, for United States Senator? A. There has been no money spent in my canvass, unless it has been by some unknown friend I might have, except what I have paid for railroad fare, for hotel expenses, and for such hilarity as has been evidenced in the city of Sacramento since the caucus, and which has been for me rather an extended luxury, I having just settled my bill.

A MEMBER: There might be some suggestion in relation to the Hon. Marion Cannon. A. Well, I have nothing to state except what I said publicly about Mr. Cannon. I have known him for many years; I know what kind of a man he is. He is the kind of a man I like. He was nominated by the People's party and against the wishes of a great many Democrats. I advised his nomination by the Democracy, and he was finally nominated. There were other Democrats, however, besides myself who contributed to his nomination, and I advocated his election as against the Republican candidate who was running in that district. Mr. Cannon came up here, and it has been a matter of common notoriety that he advocated my election, and I desire to say, with relation to Mr. Cannon, that so far as my contact with him is concerned, that whatever others may have done, he has never cost me anything. I have not even had to pay a hotel bill for him, and I know he would not allow me to do so, if I asked him. As far as I know, and I am confident of it, that if there has ever been an anti-boodle fight made, it has been made by Marion Cannon.

MR. CATOR: A single question in regard to Cannon. You say that Mr. Cannon came here and advocated your election. How did you ascertain that? A. The same way that others did. I might say, perhaps, that I had some information, may be, better than that which might be obtained from newspapers. Until after the election there was not a member of the People's party in Los Angeles who was opposed to my election for United States Senator. Numbers of them, including Mr. E. M. Wardell, told me that he desired me to be elected.

Q. Was it not thought that there was a clear Democratic majority at that time? A. No, sir.

Q. Was it not claimed by you, and by your friends on the 17th of December, that there was a clear Democratic majority? A. No; and I never knew that Mr. Kerns had written that letter until I saw it in the Stockton "Mail." I never heard of it until I saw it there.

Q. Did you not claim, for a considerable time after election, and probably up to the time of the meeting of the Legislature, that there was a Democratic majority? A. No; I claimed this, I thought from about—well, my memory as to dates is rather, but I should say from about the

middle of November, without being correct as to the date, that there were fifty-nine straight Democrats, and I counted Mr. Bennett of Orange, who was nominated by the Democratic party—that is, in the first place, Mr. Billingsell was nominated, and he afterwards withdrew, after an interview with Mr. Bennett, and then Mr. Bennett was put upon the Democratic ticket, and that made him the nominee of the Democratic and Populist parties. Then there was Mr. Kerns, who was the Democratic and People's parties, and whose constituency is largely Democratic, and hence I counted that those two gentlemen would naturally vote for a Democrat before they would vote for a Republican. And I knew that Mr. Thomas was in the same position—I knew that Mr. Thomas had stated that he would not permit a Republican to be elected, and I said that there was no doubt of the ultimate result of this senatorial struggle, however long it might be procrastinated. But I never claimed, on the 17th of December, that there was a majority of Democrats elected.

Q. Did you ever hear any pledge or promise from any of these men yourself that they would vote for a Democrat for United States Senator as against a Populist? A. Personally, not. Knowing they were nominated by Democratic constituencies, and that their votes came from two thirds to five sixths of the Democracy, I supposed that they would so do, or repudiate the Democratic nomination.

Q. Were they not nominated by the People's party before they were by the Democrats? A. That, in all cases, I am not able to answer, Mr. Cator.

Q. Did you see the returns in Mr. Kerns' district as to how many votes he was credited with? A. I did not; but I know that a large majority of his constituency were Democrats, and I know that to-day, as between myself and any other candidate, in a very large preponderance, indorses his action—his constituency will indorse his action.

Q. Is that a Democratic district, as between a Democrat and Republican? A. At the last election, when the senatorial sack was circulated, there was a Republican majority of about forty-six. My memory does not serve me with absolute accuracy; we will say between fifty and one hundred. My memory may not be correct as to forty-six, but it was a small difference. I might add right here that there was a gentleman, I think by the name of Hauck, who was nominated on the People's party ticket for Assemblyman for that district. He had been a Republican, and the Democrats would not indorse him. He withdrew finally, and I myself urged Mr. Kerns to take the nomination. I told him if he was nominated by the Populists that I thought he would be nominated by the Democrats, because his work in the latter party was a matter of common notoriety. The precinct in which he lives, Downey, is one of the few Democratic precincts of that county, and I believe very nearly the Democratic banner district.

MR. KAHN: Two years ago you stated there was a majority of one hundred and fifty or two hundred, owing to the evidence of a sack. Do you know of any evidence? A. I know of it in this sense: gentlemen who told me and stated, Here is money which I have received to forward the election of this candidate or that. Whether they received it or not I do not know. I only speak of that sort of evidence which appeals to us as evidence, but which might be, in a Court of justice, not competent evidence.

Q. There are a great many people down there willing to sell their votes? A. Perhaps fewer than from the place you come, because all the money that could be spent could not have defeated Marion Cannon—would not have been successful.

MR. CATOR: Were you a member of this convention which nominated Kerns? A. I was not a member of the convention, but I advocated his nomination, because I believed that if we ran three tickets that Mr. Kerns would get a large number of Democratic votes, I knowing that Mr. Kerns was a man of standing, and knowing, also, that he was my personal friend, I advocated his nomination by the Democratic party, and he was nominated.

MR. CATOR: Then the purpose of his nomination was, it would be the best way to defeat a Republican? A. Yes, and elect me.

Q. Was there any conversation between you and Mr. Cannon in this city with regard to his (Mr. Kerns') vote being obtained for you? A. None. I have stated to a great number of people that I believed Mr. Kerns would vote for me, and I have no doubt but that I stated that to Mr. Cannon. We are very warm, personal friends, and we talk every time we meet, and I have no doubt but that Mr. Cannon stated Kerns would vote for me.

Q. Did you learn from Mr. Cannon, or Mr. Kerns, since the 31st of December, that Mr. Kerns had signed a written agreement to act with the People's party on all political matters? A. I never heard of it. I saw a document published in the papers this morning, and if that be it I never heard of it until then, and it would not change my opinion, for Mr. Kerns' position had been defined by public utterance and private statement.

Q. Did you know that Mr. Kerns had written a letter to the Executive Committee of his party in which he stated that he was not pledged to any man? A. I heard nothing of any letter by any People's party man upon a matter connected with the senatorial situation, except that I was informed in Los Angeles that you had written a letter to the Los Angeles committee of the People's party stating that if the People's party delegate stayed by you long enough that the Republican party would come to you. I suggested that eternity was short.

MR. CATOR: Well, I will state now that I did not write such a letter. A. Well, I don't know; I simply state what I heard; that is all.

Q. Didn't you know from Mr. Cannon prior to that that Mr. Kerns had signed that agreement? A. I did not.

Q. This is the first time that you knew about it? A. The first time I knew of it. I found it rather difficult—I won't say difficult, but I could not succeed in my public walks in coming in contact with the members of the People's party with that frequency I have met members of other political organizations, and I have not gone in quest of them. In this connection, I might say that upon the fourth day of last November I went over from Santa Clara to Santa Cruz—Mr. Adams' district—and spoke there that night, and in order to make the necessary connection I had to go over that mountain at night to get into San José in the morning, and I went there mainly to advocate his election, which I might not have done had I peered into the future.

Q. Did I understand you to say that you did not know of any Populist to say that he would vote for any Democrat as against the Populist? A. No; I saw a letter of Mr. Bretz's, where he so stated

that he would vote for a Democrat; that he would support the Democratic caucus nominee whenever it became apparent that the Populist could not be elected; that he would support a Democrat; if the Populist could be elected he would vote for him, but as soon as it became apparent that he could not, he would vote for the Democrat. The substance of the letter is that Mr. Bretz would support the Democratic caucus nominee as soon as it became apparent that a Populist could not be elected. I saw that letter, but I don't know whether he wrote it or not.

Q. You had a conversation with Mr. Bretz? A. Yes, sir; in the Palace Hotel, in San Francisco.

Q. As a result of that conversation, didn't you admit to Mr. Bretz that it was not right for a Populist to go against the instructions of his party? A. No.

Q. Didn't you admit that? A. No, I was not asked any questions of a theoretical character; and I knew also he was elected by the Democratic votes of his district.

Q. Did you have any arrangement yourself to have him nominated in your interest? A. No, sir; I never had anything to do with him. I am not responsible, nor am I entitled to the credit of his presence here.

Q. Have you talked to Mr. Kerns personally here in Sacramento about whether he would vote for you or not? A. I talked to him, and he has never indicated that he would not vote for me.

Q. What did he say? A. The substance was that he would vote for me.

Q. Did you ever instruct anybody else besides yourself to ascertain whether Mr. Kerns would vote for you or not? A. No, sir; I have conducted my campaign myself, from start to finish, and any support that I have received, so far as I know, I am personally responsible for.

Q. What did Mr. Kerns say in this regard? A. The words, Mr. Cator, I cannot repeat. The substance was that he was for me, and would vote for me.

Q. Can't you remember whether he said he would vote for you or not? A. Yes; substantially.

Q. How? A. I don't know whether he said, "I will vote for you," or "I am for you." I don't know the words he used, but that was the substance of his declaration.

Q. I judge from your answer to Mr. Kahn that a sack might be used in an abundance of ways without any positive evidence of its use? A. Mr. Cator, any man who insinuates or says that I have used any sack in this canvass is a liar and a dog.

Q. I don't think, Mr. White, that anybody has said so. A. Well, insinuations are equivalent to direct charges, and I shall not allow you, Mr. Cator, or any other man, to hide behind any subterfuge or intended insinuations.

Q. You volunteered the statement yourself that there was a sack two years ago? A. Yes; I stated that so often on the stump that there ought to be no question about it now.

Q. What arrangement did you have with Mr. Marion Cannon about the senatorship? A. None.

Q. Well, you spoke, to my mind, so harsh about Mr. Bretz—Mr. Bretz never accused you of anything wrong? A. Well, he accused a

friend of mine, and I am responsible for Mr. Kerns' and Mr. Cannon's integrity, and assertions leveled against them are leveled against me.

Q. Are you responsible for the manner in which Mr. Kerns voted yesterday? A. I am responsible for this: that he is a gentleman of honesty and integrity, and any man who does not so state does not tell the truth.

Q. Do you know that he gave an absolute and sacred promise to vote for me before voting for you yesterday? A. No, sir.

Q. Do you know whether he did it? A. I do not believe that he made any such pledge. My opinion is that he never made any such pledge. I have had his word that he did not, and I prefer his word.

[A recess was here taken until 7:30 P. M.]

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EVENING SESSION, JANUARY 19, 1893.

TESTIMONY OF A. BRETZ.

Sworn.

MR. SHANAHAN: What is your pleasure, gentlemen of the committee? Mr. Bretz is on the stand, and you may ask any question you please.

A MEMBER: I have none at present.

MR. SHANAHAN: Mr. Cator, have you any questions to ask the witness?

MR. CATOR: Not at present.

MR. SHANAHAN: Have you any questions to answer or statements to make?

THE WITNESS: Have you none to ask?

MR. SHANAHAN: You are at liberty to answer anything or make any statement in relation to the corrupt use of money, or any knowledge you have of anything in that direction. A. I will state what I believe—

MR. SHANAHAN (interrupting): The question is whether the committee desires to hear what the witness on the stand believes or what he knows. As far as the Chairman of this committee is concerned he would rule out of order statements made by the witness upon belief, and in that regard I will say that I intend to be very liberal, and allow a large scope and full latitude, but when it comes down to a statement of the witness on the stand as to matters of belief, without any knowledge of the facts stated, I don't believe, as Chairman of the committee, that I can sanction it.

MR. CATOR: I understand that the resolution is to investigate the charge.

MR. SHANAHAN: And the words used.

MR. CATOR: Yes, in the words used. I suppose of course that we commenced in the right way to-day—this afternoon—the committee started in right by putting in evidence which, so far as it went, I presume, tended to show that the charge was not true, and I don't see how Mr. Bretz, a witness at this time, is properly called. Of course I have nothing to say if you assume to take entire direction of the matter. If the committee desires to call the witnesses as it sees fit, we submit very freely; if not, we will indicate the order we would like to have the witnesses called.

MR. SHANAHAN: You can call the witnesses as you desire.

MR. CATOR: I would like to call Marion Cannon.

MR. SHANAHAN: Have you subpoenaed Marion Cannon.

MR. CATOR: I have not, but it is a rule of evidence in this State that he may be called, if desired, whether subpoenaed or not, as he is present in the room.

MR. SHANAHAN: Have you subpoenaed any witnesses or asked to subpoena any witness?

MR. CATOR: No, the witnesses we rely on are here.

MR. SHANAHAN: The witnesses have all been subpoenaed by the Chairman.

MR. CATOR: I presume so, we not having subpoenaed any.

MR. SHANAHAN: I submit that Mr. White was placed on the stand this afternoon for the reason that he has a case to argue in the United States Court to-morrow, and for that reason he was placed upon the stand and his testimony taken. It seems to me that the better way would be to call Mr. Bretz, and ask him questions in relation to this matter, and it is the full desire of the Chairman of this committee, and the entire committee, to give Mr. Bretz a full opportunity to explain the words that he used in the Assembly Chamber, and to give him the first opportunity to present his case before this select committee, and there is no desire on the part of the committee to hurry him in giving his testimony; and it is, I think, the only logical way to get at it.

A MEMBER: I will ask the witness a question or two: Have you any evidence of the charge of what you stated that you believed on the floor of the joint Senate and Assembly meeting on the 18th day of January, 1893, in regard to the corrupt use of money in the election of Stephen M. White for the United States Senator? A. I can only give reasons to defend what I said—that I had reason to believe it.

Q. Have you any evidence? A. I have evidence that it is my belief—circumstantial evidence.

Q. What is the circumstantial evidence? A. Well, in the first place, Mr. Kerns was elected by the Populists, and nominated as their regular nominee. Mr. Kerns, by letter and in person, so stated that he was unpledged to any other party, and that he came here for the purpose of standing in with the Populists on all the propositions where party lines were drawn, and that he signed an agreement to that effect; that in all cases where the political line was drawn he would abide by the majority of our caucus. And, furthermore, it was his expressed intention to carry out those propositions, and so manifested until on the morning of the 18th. Then he expressed his intention to vote for Stephen M. White.

Q. To whom did he express this intention? A. To myself, Mr. Barlow, Mr. Thomas, and Mr. Adams, and we, of course, insisted that he stay with us ten days; and he said to us there—we said you stay with us ten days, and then if it becomes apparent that we cannot elect our man—and I said in this connection, we will defend you against any attacks right along. Mr. Adams stated that he would go with him—that he go with him—and he claimed he could not do it. And later I suggested that he could change his mind, and he said that he could not now make a change; he said everything was fixed. Afterwards Mr. Adams then plead with him, in the name of God, that he stay with us five or ten days. Mr. Adams said that he promised him that he

would. Later on, after having received what Mr. Adams said, I noticed a few minutes after, Mr. Marion Cannon rushed up and whispered into Mr. Kerns' ear. Mr. Kerns immediately popped out into the Library, and Mr. Carlson said: "Mr. Cator, Mr. Gaffey has got Kerns in the Library," and after he had seen Mr. Gaffey, then there was no persuasion. He would give us no assurance of anything but that he would vote for White.

Q. When did he give you the first information? A. In the morning, about 9 or 10 o'clock, at the State House Hotel.

Q. How long after that was it when he was with Mr. Gaffey? A. That was a few minutes after 11 o'clock.

Q. About two hours after? A. Yes, sir.

Q. You say that Mr. Kerns said that everything was fixed? A. Yes, sir.

Q. Did he use that language? A. Yes, sir.

Q. You will swear positively that that was the language he used? A. Yes, sir.

Q. To whom did he use it? A. To me.

Q. Alone? A. Yes; I stooped over to his seat, and he said if I had come to him a little earlier, such an arrangement might be made, but it was too late.

Q. You say Mr. Kerns signed this agreement? A. Yes, sir.

Q. To stand by the People's party caucus? A. Yes, sir.

Q. Was there any reservation on the part of Mr. Kerns? A. No, sir.

Q. Was there any hesitation on his part when he signed it? A. No, sir.

Q. He signed it willingly? A. Yes, sir.

Q. Signed it without the slightest hesitation? A. I didn't see any hesitation when he signed it.

Q. Now, is it not a fact, Mr. Bretz, that in signing this statement in which he agreed to stand by the People's party caucus, that he signed it with the express verbal understanding that that agreement did not apply to the election of the United States Senator? A. No, sir.

Q. There was nothing of that kind said? A. No, sir.

Q. Didn't he sign it with the further reservation that when he signed it, it was with the understanding that if he saw anything go wrong in the ranks of the People's party, or in their caucuses, that he would have a right to withdraw his allegiance to that contract? A. I have no recollection of anything of that kind.

Q. Have you any recollection of anything going on wrong in the caucus of the People's party—what would be considered wrong? A. No, sir.

Q. Have you any recollection of anything going on in the People's party caucus, that in case any contest came on over the election of any members of the Assembly, that the members of the People's party would vote for the man who was represented by the election officers as having the most votes, whether he received them correctly or not? A. No, sir; that resolution and that conversation was substantially this: that we agreed that we would not vote to unseat any one on technicalities who had a majority of the votes; no corrupt measures were introduced or referred to.

Q. Wasn't a proposition introduced there, and wasn't it discussed openly in caucus—wasn't it a plain proposition to stand by the man

who was represented by the election officers as having received the most votes? A. That is to say, we would not vote to expel him on any technical grounds.

Q. Wasn't it understood that they would not vote to expel him whether— A. (Interrupting.) No, sir.

Q. What did you mean by expel? A. Such a case as Mr. Miller's—where he had failed to reside a couple of days in the district—that was the technicality we had in view.

Q. So there was not an opinion—a plain proposition to stand by the man who had the most votes? A. No, sir; you cannot find a man to substantiate that unless Mr. Kerns. There is no such an agreement.

Q. Do you remember the fact that it was understood between the caucus and Mr. Kerns when he signed that contract—as you have been pleased to term it—that in case anything went wrong in the caucus of the People's party he would withdraw? A. No, sir.

Q. Did you say that Mr. Kerns agreed to wait ten days and stand by the People's party caucus? A. You must wait until Mr. Adams gets on the stand. He didn't say that to me. He said it was too late now—that matters were fixed now.

Q. Was there any talk in the caucus about standing ten days? A. In a regular caucus meeting? I don't know.

Q. Did you ever talk to Mr. Kerns about ten days? A. On the 18th we talked about standing ten days.

Q. What was the object to stand ten days? A. That would be a possibility whether we could elect our Senator or not, and then we felt that he was at liberty to break that obligation. But we insisted that he stay ten days and give ten votes.

Q. If Mr. Kerns had stayed ten days it would be all right; he could vote for Mr. White? A. It would be all right. He could vote for any one.

Q. He could vote for any one? A. We were willing to release him from that obligation.

Q. Did you ever sign any obligation to vote for a Democratic nominee? A. The circumstances are—

Q. (Interrupting.) You can answer that question by yes or no. A. Conditionally.

Q. Did you ever sign an agreement to vote for a Democrat? A. Yes; whenever it became impossible to elect a Populist, and not before.

Q. Who was to be the judge when it would be impossible? A. I suppose I was.

Q. You were to be the judge of that matter? A. I reserved that right mentally in my own mind.

Q. You were the sole judge of that matter, were you, Mr. Bretz? A. Yes, sir.

Q. And if you had ever been convinced of that fact—had been continued day after day and no choice had been made, and if you had become convinced that after balloting day after day, a Populist could not be elected, you then claimed the right to vote for the Democratic nominee? A. Yes, sir; and I would have done so.

Q. You intended to do that? A. Yes, sir.

Q. There was no limitation upon you except your own conclusions? A. No, sir; none whatever. The contract is in writing.

Q. If you had concluded at the end of ten days—suppose it was at the end of eight days that the Populist could not be elected how would that be? A. I would not have the right unless the consent of the caucus was given me. But so far as the Democratic party was concerned, I was to be the master of the situation.

Q. You were not the master of the situation so far as your own caucus was concerned? A. No, sir.

Q. I thought you stated; a minute ago, in the agreement with the Democratic party—you mean you did not have to ask the consent of the Democratic party as to when you should vote for them? A. No, sir; I would not have to ask.

Q. Are the facts that you have stated, Mr. Bretz, the only evidence that you have for the purpose of securing Mr. Kerns' vote for Mr. White for United States Senator? A. Yes, sir; substantially so.

Q. Do you mean that that is the only evidence that you have? A. That is the only evidence upon which I based my suspicion.

Q. And that is the evidence upon which you based your statement which you made in the Assembly Chamber yesterday? A. Yes, sir.

Q. And there was nothing else within your knowledge? A. Only circumstantial evidence.

Q. Well, you have related all that? A. Well, Mr. Cannon came up here in the beginning of the Legislature—

MR. SHANAHAN (interrupting): I will state right now that the witness is out of order, and if he has no foundation for his statements it is better not to make them than to make statements based upon suspicion. The witness will be allowed perfect and full latitude in stating his position. That is my desire, and I am satisfied it is the desire of this committee, but he must confine himself to facts.

A MEMBER: Do you say that because the fact that Marion Cannon came up here at the opening of the Legislature, that that was an additional evidence to your mind that money was being used in behalf of Mr. White's election? Do I understand you to state that, Mr. Bretz? A. Do you want to connect this with Mr. White?

Q. I want you to do the connecting. Was the fact that Mr. Cannon came up here an evidence that Marion Cannon came up here to secure a vote for Mr. White? A. Yes, sir.

Q. Who do you suppose furnished the money—who furnished the money? A. Well, it is generally understood, and circumstances point in that direction, and we will be able to prove later on that Mr. Cannon had entered into a contract with Mr. Stephen M. White to furnish certain parties' votes here, and the difficulty was in delivering the goods.

Q. That is not an answer to my question. A. It was used for the purpose of carrying out the contract.

Q. Who furnished the money, if there was any used? A. That is beyond my knowledge.

Q. What evidence have you of any money being used? You say, or said yesterday, that you believed that Mr. Marion Cannon was the negotiator? A. Yes, sir.

Q. Well, by negotiator you mean a man who went between the man whose vote was bought and Marion Cannon? A. Well, I may not have expressed it right, but my suspicion has never gone beyond Mr. Cannon.

Q. When you say that Mr. Cannon was the negotiator, what do you mean? A. I mean that he was the negotiator between Mr. White and

himself, and that he had to get it with his own money. We believe that we will be able to show that there was an agreement between Mr. Cannon and Mr. White, and we believe that there was an obligation on Mr. Cannon to wield a certain percentage in the Populist ranks.

Q. What evidence have you of Mr. Cannon using money? A. I have none further than that.

Q. The mere fact that he met with Mr. Kerns is all you have? A. Yes, sir; circumstantial evidence.

Q. And it was upon the conclusion based on the evidence here that you made the statement that you did the other day, in regard to the corrupt use of money? A. Yes, sir.

MR. MATHEWS: Mr. Bretz, do you think that if a man signs a contract and afterwards violates it, that he was necessarily corruptly influenced? A. Well, no, not always; but connecting it with the other circumstances which I have already given, leads me to suspicion; and, judging from the past history, which we have read about boodle sacks, such as Mr. White made reference to here on the stand, we have reason to.

Q. That is not an answer to my question. [Reporter reads last question.] A. Not always. It only goes to show that a man who makes pretenses—a man who pretends to be a good citizen—that something extraordinary must be brought to bear.

Q. Do you think that a written agreement of that kind is any more binding on an honorable man than a verbal one? A. Not a bit, except that the evidence is there and he cannot deny it.

Q. You were in a position before the election to obligate yourself under certain conditions to support the Democratic candidate for United States Senator, and you stated that you reserved to your right exclusive control as to the time when you should perform that service. A. It was not exclusively reserved. The question of restriction was never put upon me. I was not asked as to the time it became impossible to elect our candidate.

Q. I understood you to say that you had agreed to vote for a Democratic candidate for United States Senator under certain contingencies, and that you were the sole judge when that contingency arose? A. Yes, sir; but no provisions in it whatever.

Q. Well, you would not intend to arrogate rights to yourself which you would deny to your fellow man? A. How is that?

Q. You wouldn't undertake to stand upon reserved rights that you would deny other men? A. Certainly not.

Q. Did it ever occur to you that it might be the same agreement that Mr. Kerns had within his own mind—that he would vote for the Populist as long as he thought there was a possibility of electing one, and abandon him for a Democrat when in his judgment the Populist could not be elected—do you think he should have the same right that you claim you had? A. There were two contracts. The first given to the Democrats, which left me to be the judge as to the time. But later on I signed an agreement with the Populists to the effect that the majority should determine as to the time.

Q. But doing that, did you not abandon the Democrats, and wholly deny them of the advantages that you had given—the promise that you had given them? A. No, sir.

Q. You entered into an agreement that you would stand by the Populists for a certain length of time? A. Until a majority decided that it was not well to stand together.

Q. Well, suppose that the majority of these Populists had individually deserted their candidate and scattered—one man for one candidate and another for another—and had left a minority of you—three or four—still adhering, wouldn't that indicate to your mind that the time had arrived when you should desert your candidate, and the Democrats should have their right? A. Yes, sir.

Q. Well, that might have happened without the action of a caucus? A. Well, I wouldn't be responsible—I understand what you mean—that if the caucus had abandoned the agreement—then I should hold that the Democratic contract was next in order, for the People's party caucus contract was broken. If our caucus scattered and broke up the camp, then I would consider the cause hopeless, and I would consider that the agreement would be no longer binding, but the agreement of the Democrats would.

Q. And you would hold that right regardless of other members? A. Yes, sir.

Q. Now, possibly Mr. Kerns had a right to exercise the same views of the same matter under conditions as it occurred to him, notwithstanding his contract. It might be done without consulting this caucus? A. I don't think so.

Q. I want to get the matter in the shape that you claim that you have a right which you deny him. A. How could Mr. Kerns have entertained any such right when we were all appealing with him, and left him with the promise that he would stand with us for a number of days, and we had no reason to believe that he would violate that contract.

Q. Did you ever have any suspicions until the vote was cast that Mr. Kerns would do so? A. Not until that morning. Of course we had some little fears that he would be under the influence of Mr. Cannon strongly.

Q. So the fact that he just simply deserted his colors and went over to the enemy is the only foundation for the charge you brought against him in the Joint Assembly yesterday? A. And the proceedings in slipping into the Library.

Q. When did you see him slip into the Library? A. I did not see him myself; Mr. Carlson did.

Q. When did you hear that he did? A. A few minutes thereafter.

Q. What day was that? A. The 18th.

Q. Yesterday? A. Yes, sir.

Q. After the Assembly had met? A. No, sir; it was before it had been called to order.

Q. And that is the only time you saw him go there, and that was the beginning of your suspicions of his integrity? A. Yes, sir; that was the confirmation of suspicions that I had of Mr. Cannon's mission here.

Q. You did not consider that you were under any obligations to the Democrats whatever, until you saw fit to carry out your agreement with them? A. You don't consider that you violated your promise to them? A. No, sir.

MR. SHANAHAN: When you speak about slipping into the Library, what do you mean by that? A. I mean by that that he went in there to be heeled.

Q. Heeled with what? A. Money; that is my suspicion.
Q. State your full meaning in that regard. A. I mean that he was bribed; that is my suspicion.
Q. That is what you mean by slipping into the Library? A. Yes, sir.
Q. That Mr. Kerns went in the Library to be bribed? A. Yes, sir.
Q. That is your belief? A. That is my opinion.
Q. And that is what you mean when you say that he slipped into the Library? A. Yes, sir.
Q. You did not see him go into the Library? A. Not myself, but other parties did.
Q. Do you know what occurred in the Library? A. No, sir.
Q. Do you know of one cent ever having been paid to Mr. Kerns for his vote? A. No, sir.
Q. Do you know of one cent being paid him for any purpose, or for the United States Senatorship? A. No, sir.
Q. In any way, shape, or manner? A. No, sir.
Q. It is merely a suspicion that you have in your mind? A. Yes, sir.
Q. Which is the basis of your statement—the statement you made yesterday in the Joint Assembly convention? A. Yes, sir.
Q. Do you know of one cent of money, or any money, being paid by any human being in behalf of the election of Senator White yesterday—either on yesterday, or at any time theretofore, in behalf of his election—to any human being on the face of the earth? A. No, sir.
Q. Do you know of any person who does know? A. No, sir.
MR. SHANAHAN: That is all.
MR. CATOR: You were present when this agreement was signed by Mr. Kerns? A. Yes, sir.
Q. And he was in that room frequently thereafter? A. Yes, sir.
Q. Were resolutions of various Alliances, and National, State, and County Committees produced there? A. Yes, sir.
Q. And unanimous resolutions of the People's party of Los Angeles? A. Yes, sir.
Q. And of the Farmers' Alliance? A. Yes, sir.
Q. And Mr. Kerns was a member of the Farmers' Alliance? A. Yes, sir.
Q. And these were to the effect that he should hold steadfastly and vote for the caucus nominee of the People's party? A. Yes, sir.
Q. Were all these resolutions to that effect? A. Yes, sir.
Q. In addition to that, did letters and telegrams from his own people appear—from the same county? A. Yes, sir.
Q. And this continued down to yesterday morning? A. Yes, sir.
Q. You say as between yourself and the Democratic party you were the judge of when you would, if ever, go to them? A. Yes, sir.
Q. And when you signed this paper at the caucus, then of course the majority became judge? A. Yes, sir.
Q. Did the majority at any time release any person from the obligations there taken? A. No, sir.
Q. Was it ever discussed there that any one should be released from it? A. No, sir.
Q. Did Mr. Kerns say that he would give that caucus formal notice before he would abandon it? A. Yes, sir.
Q. Did he ever come before it and state that he had agreed to abandon it? A. No, sir; until yesterday morning at the hotel.

Q. That was not in any meeting of the caucus? A. No, sir.
Q. You were simply talking with him there? A. Yes, sir.
Q. His conversation at that time was in the nature of—in an indefinite manner? A. Yes, sir.
Q. He did not say absolutely in that conversation that he would not abide by the agreement that day? A. I think not, sir.
Q. Now, then, after that you went up to the Capitol? A. Yes, sir.
Q. And this conversation occurred with Mr. Adams which you referred to? A. Yes, sir.
Q. And after this conversation with Mr. Adams in which it was understood that he made this promise, then you saw Marion Cannon whisper to him? A. Yes, sir.
Q. This was how long before the session convened? A. I could not state.
Q. Along about 11 o'clock? A. Yes, sir.
Q. And he passed into this Library and out again? A. I was so informed.
Q. And never held any further conversation to your knowledge prior to the time of casting his vote for Stephen M. White after— A. (Interrupting.) I believe he had with Mr. Adams.
Q. With him? A. Yes, sir.
Q. But no one on behalf of Mr. White ever saw him after that? A. No, sir.
Q. And no one on behalf of Mr. Gaffey? A. No, sir.
Q. From the time that he stepped into that Library until the time that he cast his vote for Mr. White, are you aware that he was in a place for anybody to make him break his word?
MR. SHANAHAN: That is not proper—
MR. CATOR: Now, Mr. Bretz, you say that your suspicion, or that your statement, is based upon this condition of facts? A. Yes, sir.
Q. And that the fact that one of your members cast that vote under those circumstances, and after such events as that had happened, is the foundation that you based your statement upon? A. Yes, sir.
Q. You heard Mr. White testify this afternoon? A. Yes, sir.
Q. That he never offered to any one any office or any position of emolument or trust, and that he would not agree to do so? A. Yes, sir.
Q. Is that one of the reasons that this change was not brought about? A. I don't think it could be brought about by an office.
Q. And the fact that no office was promised leads you to believe that it was brought about by money? A. Yes, sir.
MR. CATOR: That is all.
MR. ALFORD: Mr. Bretz, you say that on the morning of the 18th, about 8 or 9 o'clock, Mr. Kerns gave you to understand that he did not intend to stand by Cator? A. That was the talk down in the hotel.
Q. He told you that? A. Yes, sir; he told us.
Q. How many of you were present? A. I think there was at least four.
Q. Four or five of you? A. Yes, sir.
Q. People's party men? A. Yes, sir.
C. All members of the Legislature? A. Yes, sir.
Q. Did you ever hold any caucus before the Assembly met that day? A. No, sir.

Q. Mr. Kerns had never had an opportunity to tell anybody in a caucus that he did not intend to vote for Mr. Cator? A. No, sir.

Q. What time was that? A. About 11 o'clock.

Q. When he was in the Library, you mean. A. Yes, sir.

Q. Well, long before that he told you that he did not intend to vote for Cator—two hours before that? A. Yes, sir; but he afterwards promised Mr. Adams that he would, up to the time that he went to the Library.

MR. KERNS: I desire to ask some questions.

MR. CHAMBERLAIN: I appear for Mr. Bretz as associate counsel, and I object to Mr. Kerns asking questions of Mr. Bretz.

MR. SHANAHAN: I desire now to say that any one will be permitted to ask questions, if they desire; any person who appears here and desires to ask questions, so long as they confine themselves to facts, will be allowed.

MR. ALFORD: Previous to signing this agreement that you speak of, didn't Mr. Kerns stand up in due form upon the floor of your caucus meeting and address the Chairman of that caucus, and tell him that he would sign it only upon the agreement—this agreement, that it was not to control his vote or have anything to do with his vote for the United States Senator? A. No, sir; his argument there at that time was that he was willing to sign it where the political line was drawn. But he argued at first that this was not a political matter.

Q. What was not? A. The United States Senatorship. And we argued to the contrary; that is where the line was drawn, the strongest and the most important. And after our argument, he did not object, but signed the contract.

Q. Wasn't the question put directly by Mr. Kerns as to whether this agreement applied to the United States Senatorship, and was not the answer given by a member of that caucus that it did not; that it applied to matters that come up—to matters in the Assembly from time to time. A. No, sir.

Q. That statement was never made? A. No, sir.

MR. KAHN: When you held your party caucus and you made a nomination for United States Senator, was Mr. Kerns present at that caucus? A. I couldn't say positively whether he was there that evening or not—yes, I believe he was.

Q. Did your party make its caucus nomination in Sacramento or San Francisco? A. In Sacramento.

Q. When? A. Well, I cannot remember the date. I think about the 12th—in that neighborhood.

Q. Do you remember what day of the week it was? A. I think it was on Thursday.

Q. Was it in the morning or evening? A. In the evening.

Q. About what time? A. Oh, I should judge about 9 o'clock or 10 o'clock.

Q. Was there a roll call? A. I presume so. I have no recollection as to those details.

Q. Do you keep minutes of your caucus meetings? A. Yes, sir.

Q. Where are those minutes? A. The Secretary has them.

Q. Is the Secretary here? A. I don't know.

Q. Who is the Secretary? A. Mr. Adams.

Q. Do you know whether he has the roll call of the minutes with him? A. I do not.

MR. MATHEWS: You stated some time ago, in answer to Mr. Cator, that you knew that Mr. Kerns had not been corruptly influenced by office on the part of Mr. White? A. I judge so from what Mr. White said on the stand.

Q. I understood you to say that it was not offices he was bought with? A. I retract that. I only say that by what Mr. White said.

Q. Well, I would like to have that determined. I want this determined because he said that—I would like to come to the conclusion—to have him come to the conclusion that it was money, because Mr. White stated that he used no corrupt means by use of money or patronage of any kind, so that matter is on record that he stated.

MR. SHANAHAN: As a matter of fact the only charge to be investigated here is that of the statement of Mr. Bretz of yesterday, which is as follows: "That we believe that this change was brought about by the corrupt use of money, and we believe that Marion Cannon is the negotiator." The question of office does not enter into it, Mr. Mathews.

MR. MATHEWS: In my judgment you can buy a man that way. I want him to say.

THE WITNESS: I came to that conclusion on yesterday, and my conclusion has been confirmed since I heard Mr. White's testimony.

MR. MATHEWS: It was understood that he did not give him any office or money—an offer of either? A. He did not give him anything.

MR. SHANAHAN: We are questioning Mr. Bretz as to the statement made yesterday, and not to-day.

MR. MATHEWS: I will insist on the committee determining this matter. The purpose I had in mind was simply an answer to the question given to Mr. Cator—that he knew that Mr. Kerns had not been influenced by office, because Mr. White promised him none.

Q. Now, are you satisfied that he did not corrupt him with money or office; now do you so state? A. Now, your statement is whether I believe the statement of Mr. White?

Q. Yes, sir. A. Yes, sir; I do. I believe Mr. White.

MR. MATHEWS: Well, that is all.

MR. ALFORD: Was there a full party caucus the night you nominated Mr. Cator for United States Senator? A. I think there were only seven present.

Q. Who was absent? A. I couldn't say whether it was Mr. Jacobsen or Mr. Kerns. I don't know as to the date, but it occurs to me that it was Mr. Jacobsen who was absent, and that makes me believe that Mr. Kerns was present.

Q. You could not swear positively that Mr. Kerns was present. A. No, sir.

MR. ALFORD: That is all.

TESTIMONY OF JOHN T. GAFFEY.

Sworn.

MR. PUESCHIEL: Were you managing Mr. White's fight? A. Not particularly managing it; I was a friend of his.

Q. Did you use any money in behalf of Mr. White? A. No, sir.

Q. Or anything else, pledges of office? A. No, sir.

Q. Did you make any promise to Mr. Kerns? A. No, sir.

Q. How long have you known that Mr. Kerns was going to vote for Mr. White for United States Senator? A. It was generally understood from the time that Mr. Kerns was nominated.

Q. Have you been asked to purchase any votes for Mr. White in the senatorial fight? A. Not by any member of the Legislature.

Q. Has any one been to you— A. (Interrupting.) There has been discussions on the subject—nobody connected with this case, however. One party called on me at the Golden Eagle Hotel and suggested that there was some votes in the People's party that could be got for coin.

Q. Who suggested that you might buy some of the People's party members? A. A gentleman by the name of Chamberlain.

Q. Is this the gentleman here, Mr. Gaffey? [pointing]. A. Yes, sir.

Q. Was Mr. Kerns' name mentioned in connection with this? A. No, sir. Mr. Chamberlain came to me on the sidewalk and asked me if I was interested in Mr. White's fight, and I said "Yes," and he says, "Can I speak to you?" and I said "Yes," and he said "Where?" and I said, "Up in my room, No. 51," and we went up there and sat down. "Now," he says, "you see this fight is liable to get into a deadlock. The People's party hold the balance of power. Now," he says, "there are four votes in the People's party that can be procured, and there is one man who has a mortgage of \$4,500 on him, and he will have to have that mortgage removed. There are some of the others, too, but the price is not exactly fixed, but I know I can fix it." I said: "Mr. Chamberlain, Mr. White is not buying any votes. He has made this fight on the proposition that he was a poor man. He has no money to spend in purchasing votes, and he will win the fight anyhow, for there are enough of men in the People's party who will never consent to a deadlock, no matter how long the balloting may be prolonged. They will vote for Mr. White, because I know some of them to be honorable men, and said they would vote for the Democrat if they could not elect the Populist, and they will unquestionably vote for him." That was all there was to our conversation.

Q. Were any names mentioned in the proposition that money might buy some votes? A. I asked for names, and the gentleman refused to give them, and he said that it was pretty expensive living here; that a little money would be very good immediately. I went down afterwards to Mr. White's room and told him what had occurred, and we had a laugh over it, and we attached no importance to the proposition. I didn't know that the gentleman had any connection with the People's party. I don't know now. I don't believe that he could have delivered the votes. Anyway, I took it as a joke. I would not have referred to it now, only he is here and acting as associate counsel.

Q. Is it a fact that Mr. White relied on Mr. Kerns for his vote? A. Yes, sir. When he was about to be indorsed by the Democrats, I asked Mr. White whether he could rely on him or not, and he said that he could rely on him as much as he could on me; that he was perfectly satisfactory, and that whenever his vote would elect him that he would get it, so I never bothered myself about it after that.

Q. Did you have a conversation in the Library there with Mr. Kerns yesterday? A. Yes, sir.

Q. What was the subject? A. Mr. Kerns introduced a constitutional amendment—General Mathews one in the Senate—redistricting the State

into seven districts. The constitutional amendment was introduced in both houses. Mr. ———, of the State Board of Equalization, was present and called my attention to the fact that I had allowed the Controller to remain a member of the Board—at present the Controller is ex officio a member—and suggested that I strike out the Controller, as it was not necessary to have him a member of the Board, and I should add to it "As the said districts existed in 1882," which would prevent the members of the Board from increasing. I went to General Mathews and had him amend his bill, and I went to Mr. Kerns, and I did not find him, and I was coming into the Library, and he stepped in after me, and I told Mr. Kerns about it, and he says, "You make the necessary amendment to it, and I will attend to it." And he pulled a letter out of his pocket from Mr. Dillon, referring to the bill which is to reduce the number of Judges from six to four in Los Angeles County. He says, "Dillon seems to disapprove of the proposition, and I am inclined to think he is correct. He is District Attorney." I said, "And I would do just as Mr. Dillon suggests. He ought to know." Mr. Kerns said, "I was going to show General Mathews this and have a talk with him, but if you will attend to it, it will be all right, and we can go with both at the same time." That is the only conversation that took place.

Q. That is the substance of the conversation? A. Yes, sir; there was no reference whatever, as you asked me, to money or anything in connection with the senatorial fight, for I never bothered Mr. Kerns about his vote, as Mr. White assured me that he was all right long ago, and I never spoke to him afterwards.

Q. Did you tell Marion Cannon to bring Mr. Kerns into the Library or to send Mr. Kerns into the Library? A. No sir; I never met Mr. Cannon until yesterday, in the Golden Eagle Hotel, after the United States Senator was elected.

A MEMBER: How long have you known Mr. Kerns? A. Since I came to Sacramento.

Q. Do you know his reputation in the community in which he resides for truth and honesty? A. Yes; I have heard him spoken of as an honest man.

Q. How long have you known him? A. Since I came up here.

Q. He is an honorable man? A. Yes, sir; so far as I know.

Q. Do you know what he was before he was a People's party man? A. I understand he was a Democrat.

MR. CATOR: I understood you to say that you never spoke to Mr. Kerns regarding how he would vote in this contest at any time? A. No, sir.

Q. You never knew him until you came here? A. No, sir.

Q. And never had any knowledge or information from him as to how he would vote? A. No, sir.

Q. Did you hear a rumor that Mr. Kerns was going to vote for White on the streets? A. Yes, sir; I felt perfectly satisfied of it. I heard various rumors; I was perfectly satisfied he would.

Q. How were you satisfied of it if you didn't ask him? A. From what Mr. White said.

Q. But you never spoke to him on the subject? A. No, sir.

Q. Were you not quite active in ascertaining how the members would vote? A. Yes, sir; but when Mr. White said a man would vote for him I didn't pay any more attention to it.

Q. But you say the conversation between you and he was on the subject of a constitutional amendment? A. Yes, sir.

Q. You did not speak to him on the subject of the senatorship? A. No, sir.

Q. Did you ever hear since you have been here that he signed an agreement to vote for his own caucus nominee? A. It was rumored.

Q. Wasn't it published that the Populist members would do so? A. Yes, sir.

Q. Yet you never asked Mr. Kerns how he was going to vote? A. No, sir.

Q. Never had any conversation with him about it? A. No, sir.

Q. At any time? A. At any time.

Q. And yesterday, just before that election took place, you were in entire ignorance as to how he would vote, except what you heard? A. I was convinced that he would vote for Mr. White from what Mr. White said.

Q. And yesterday, as that final election was about to come off, you let that question rest that way, did you? A. Yes, sir.

Q. And took no steps to even speak to him and ask him how he was going to vote—whether he was going to vote for Mr. White on that ballot, or not? A. No, sir.

Q. And you say you were largely looking after Mr. White's interest and election? A. Yes, sir.

Q. Did you expect Mr. White would be elected on that ballot? A. Yes, sir; I could not tell, but I hoped he would be.

Q. To the utmost of your extent, by proper means, you were trying to secure it? A. Yes, sir.

Q. And Mr. Kerns was one of the parties that you relied on to secure it? A. I don't know. There were several other parties among them who, if they found out a Populist could not be elected—

Q. (Interrupting.) Did you have the promise of any other Populist that he would vote for Mr. White on the first ballot? A. I understood that Mr. Bretz would vote for a Democrat when he found out that a Populist could not be elected.

Q. You didn't know yesterday, before that ballot took place, that any Populist, other than Mr. Kerns, would vote for White? A. No, sir.

Q. And yet you expected that he would be elected? A. Yes.

Q. Why did you expect it? A. Because Mr. Kerns would give it to him.

Q. And you took the chances of that being done without asking him? A. I did not go around asking every man. If Mr. White told me that a man would vote for him, I didn't pay any further attention to that man, if he told me he was all right, for Mr. White is a pretty good captain himself.

Q. You didn't know, then, just before Mr. Kerns met you in the Library, that he gave an absolute promise to Mr. Adams to vote all that day for a Populist candidate? A. No, sir.

Q. Did you ask any Populist to vote for Mr. White. A. I had a talk with Mr. Bennett of Orange.

Q. When? A. In the Legislature one day. I didn't ask him whether he was going to vote for Mr. White, but I talked about the speech that Mr. White made for him in Orange.

Q. In that conversation he informed you before he got through that there was no use of talking to him about this matter? A. No, sir; he did not.

Q. Was there any conversation between Marion Cannon and you? A. I had a talk with Mr. Cannon after I came up here, and I asked him if he had seen anything of Mr. Kerns, and he says, "Well, there is a People's party man up here bringing a very strong pressure to have him vote for Mr. Cator, but Kerns is a man of good judgment, a faithful representative, and interested in his constituents, and I believe he will vote for White; he is an honest man."

Q. Was there any conversation between you and Marion Cannon regarding what period he would vote for him? A. No, sir.

Q. Was there any conversation as to how Kerns would throw his vote on the first ballot? A. No, sir.

Q. You knew that there was a possibility that he would stand? A. I relied on what I heard from Mr. Kerns' friends, and they told me he had the reputation of being an honest man.

Q. The fact that Mr. Cannon told you that all this pressure was being brought to bear upon him didn't lead you to ask him how he would vote? A. No, sir.

Q. And yesterday you let that ballot be taken without asking him about it. A. I didn't know how he would vote; I thought he would vote for Mr. White.

Q. But you didn't speak to him on the subject on that day? A. No, sir; never asked him a word about it.

MR. CATOR: That is all.

A MEMBER: Did Mr. Kerns, when he met you in the Library yesterday, did he bring up the subject of United States Senator? A. No, sir; we didn't discuss that at all between us.

Q. In regard to the conversation you had with this gentleman in the Golden Eagle Hotel, he never mentioned any names when you spoke of Mr. Chamberlain? A. No, sir.

Q. How many did he say he could deliver? A. Four votes.

Q. That is, Mr. Chamberlain? A. Yes, sir.

TESTIMONY OF MARION CANNON.

Sworn.

MR. SHANAHAN: State your name? A. Marion Cannon.

Q. You reside where? A. Ventura.

Q. Your occupation? A. Farmer.

Q. What is your position, officially? A. I am Congressman-elect from the Sixth Congressional District.

Q. Elected on what ticket? A. People's party and Democratic.

Q. Were you nominated by both of those parties? A. Yes, sir.

Q. And won the election? A. I have got my certificate, at all events.

Q. By what majority? A. Well, I don't know as I can give you the exact figures, but something like six thousand, I believe.

Q. Are you connected with the Farmers' Alliance of this State? A. Yes, sir; since its organization.

Q. Do you belong to that organization now? A. Yes, sir.

Q. In what capacity? A. A member and Past President.

MR. SHANAHAN: Gentlemen, take the witness.

MR. ALFORD: Mr. Cannon, are you acquainted with T. J. Kerns, a member of the present Assembly of California? A. I am.

Q. And acquainted with Stephen M. White, Senator-elect from California? A. Yes, sir.

Q. How long have you known Mr. T. J. Kerns. A. About a year, I should judge—probably more—a little over a year.

Q. Do you know his reputation for truth, honesty, and veracity in the community where he lives? A. His general reputation is good. He is a square man.

Q. Did you ever pay him, or offer to pay him, either directly or indirectly, any money to secure his vote for Stephen M. White for United States Senator? A. No, sir; neither directly nor indirectly.

Q. Do you know what the circumstances were surrounding his nomination and election, as to whether or not he was expected, and expected at that time, to vote for Stephen M. White? A. It was expected, and it was generally understood in Los Angeles County, so far as I know anything about the case, that he would vote for Stephen M. White whenever his vote would elect him.

Q. That was the understanding—that whenever his vote would elect him that he would vote for him? A. Yes, sir.

Q. Did you ever secure the services of Mr. John T. Gaffey for the purpose of purchasing the vote of Mr. Kerns for Mr. White for United States Senator? A. No, sir.

Q. Do you know of any money being used for the purpose of securing Mr. Kerns' vote for Mr. White? A. No, sir; I do not; none whatever.

Q. Did you ever talk with Mr. Kerns in relation to the matter of how he intended to vote? A. Yes, sir; several times.

Q. Were those conversations—was the result of those conversations about alike, or were they different? A. They were different. My understanding of Mr. Kerns' position when I first talked with him was simply this: That if it didn't appear to be in his power at that time to elect Mr. White that he would vote for Mr. Cator at first, for the reason that he did not think that his one vote would elect Mr. White.

Q. For the reason that he did not think that his vote would elect Mr. White? A. Yes; that was our first conversation, but on the day the election occurred the mob—I call it such—that surrounded Mr. Kerns in the hotel down there, pressing him to continue to vote for Mr. Cator, Mr. Kerns boldly and openly declared that he would vote for Mr. White.

Q. When was that? A. The day that Mr. White was elected. He voted for Mr. Cator on Tuesday in the Assembly, and on Wednesday morning, about 9 or 10 o'clock, Mr. Bretz and Mr. Barlow, and other members of the People's party, surrounded him, you might say, there in the hotel, and used their utmost endeavor to make him come back and promise to vote for Mr. Cator, and he then declared in their presence and my presence that he intended to vote for Mr. White. That is the first time that he openly declared to me that he would vote for Mr. White.

Q. What time in the morning? A. Between 9 and 10 o'clock. It was quite awhile before we came up to the Assembly Chamber.

Q. Did you see or talk with Mr. Gaffey on the morning—any time during the morning of the 18th? A. No, sir; not at all until the evening, that I know of.

A MEMBER: After having heard this statement of Mr. Kerns in the Capital Hotel, did you have any further conversation with him? A. None, except the time the Assembly opened. As Mr. Bretz has testified here, I went to Mr. Kerns' desk just before the Assembly opened, or about the time it opened, and I didn't whisper to him, either, but I spoke to him in a reasonably audible tone of voice, and said to him—if you want to know what I said—I have a right to speak to any man on that floor without being a boodler—I will tell you what I said. Senator Mathews, I think, met me in the lobby, and he says to me: "We cannot elect White to-day; Mr. Goucher is sick abed; he is seriously ill;" and I told him I regretted to hear it, and I walked in, and went to Mr. Kerns' desk, and said to Mr. Kerns in an audible tone, and Mr. Cook was by my side—to Mr. Kerns that "Mr. Goucher is sick, and will probably not be here to vote to-day, and therefore Steve White cannot be elected to-day." I said this to Mr. Kerns in view of the fact that they were pressing him to vote the first time, at all events, for Mr. Cator. I thought if he knew that White could not be elected on the first ballot, that he would take advantage of it and vote for Mr. Cator. That is about the exact language, as near as I can remember it now, and I said nothing about it.

Q. Did you at that time mention to Mr. Kerns, or say to Mr. Kerns, that Mr. Gaffey was in the Library? A. No, sir; I did not know that he was in the Library, or in the building. I immediately left Mr. Kerns, and walked out and up in the gallery, where I took a seat, and about that time the Assembly was being called to order. I did not see Mr. Kerns—I left him in his seat when I left there, and I did not see him afterwards until the vote was cast.

MR. MATHEWS: Did Mr. White take a particular interest in your canvass? A. Yes, sir; he took a very active part both in my canvass and nomination.

Q. He exercised a great deal of influence to get you the nomination? A. Yes, sir.

Q. You therefore felt under considerable obligation to him? A. I did. Nevertheless, I wish to state that I never had a conversation as to his action; never asked a delegate to that convention to indorse me, and in no way used any influence to procure that seat; but I felt under obligations to him.

Q. I am a straight-out Democrat, and what I was getting at is that you being human, and, as I understand, a Virginian, you would feel disposed to reciprocate a kindness of that sort, and that you felt an interest in the election of Mr. White? A. Yes, sir; I took this position: That in case the People's party men could not elect a man of their own, those men indorsed by Democratic conventions should go to Mr. White in the event they could not elect a member of their own party. I have advocated that. I spoke before the People's party and took that position, and advised them all to vote for Mr. Cator until they were satisfied there was no show for his election. And I insisted that when they determined that fact for themselves, that then they should support Mr. White. And I supposed that Mr. Kerns thought that the time had arrived the other day, and he felt bound to vote for Mr. White according to his promise.

Q. Could you have been elected in your district without the assistance of Democratic votes? A. I think it is extremely doubtful. It is be-

tween three and four thousand Republican, and it is doubtful whether I could get in or not if the Democrats had nominated a man. I think probably I would have been defeated.

MR. SHANAHAN: Do you know of any money being used corruptly in Mr. White's behalf for the United States Senatorship during the senatorial campaign? A. No, sir; most emphatically, no, I do not.

Q. By any one? A. No, sir; in any shape or manner. I would desert the best friend I had in the world if I found that he was going to corrupt the Legislature.

MR. CATOR: So you say that this was a mob that was surrounding Mr. Kerns in the hotel? A. I would call it a mob.

Q. That is, the seven People's party members of your party is what you call a mob? A. Well, they acted with all the characteristics of a mob there.

Q. You say that it was known that Mr. Kerns would vote for Mr. White during the election—did you have any agreement to that effect? A. No, sir.

Q. How was it known to you? A. Publicly. I spoke all through Downey, in his district, and it was so understood that if the People's party did not carry the Legislature—

Q. (Interrupting.) Mr. White said here this afternoon that he never had any understanding with him that he would vote for him as against a Populist? A. That is what I say.

Q. How was it known that he would vote for Mr. White when it was not known what the Populist strength was? A. Well, Mr. Kerns would vote for Mr. White—

Q. Do you mean for the People's party to have a majority in the Legislature? You mean to say that the People's party would vote for Mr. White unless they had a majority? A. No, only in Mr. Kerns' case.

Q. When was the first time you ever asked Mr. Kerns how he would vote on this question? A. I don't believe that I ever asked him the question directly.

Q. When was the first time you talked with him about the United States Senatorship? A. Well, since I have been in this city.

Q. Not before that? A. No, sir; I had no understanding with him before that; only in the campaign, as I stated, it was well understood in all our meetings that he was a friend of Mr. White's.

Q. In the People's party meetings? A. Yes, sir.

Q. Did you hear Mr. Kerns state so? A. No, sir.

Q. Who was it that understood it—name some of them. A. The People's party in Los Angeles. Democrats attended those meetings, and they were very large ones.

Q. Name one People's party man with whom it was so well understood. A. Oh, well, I can name several. I will name one of some prominence—two—one is the District Attorney of Los Angeles, Mr. Dillon, the other Mr. —, County Lecturer of that county.

Q. Did you ever hear any members of the County Committee state that? A. Yes, sir.

Q. Do you know Mr. Batchelor of the County Committee of Los Angeles County—the Chairman? A. Yes, sir; I suppose he so signs himself.

Q. Mr. Cannon, Mr. White says you came up here to Sacramento to assist in electing him? A. Well, in one sense probably that is true. He

was certainly my choice in the State when a People's party man could not be elected.

Q. Didn't you say at one time in the caucus room, within two or three weeks past, when this matter was being discussed there, that in view of the resolution stated that it was their duty to stand up and vote for their own candidate until they should see that the Legislature might adjourn without electing, when they should give way to prevent the appointment by the Governor? A. I was stating at that time a contest that I had with the leading members of the People's party, notably the State Executive body of the People's party, as they declared that they should tie up this Legislature first, last, and all the time, and let the Governor appoint, rather than have this Legislature select Stephen M. White.

Q. The point you were making at that time was that they ought not to go so far as to allow the Legislature to adjourn without electing a United States Senator? A. Yes, sir; and they should be relieved from this resolution that purported to pin them down.

Q. Did you ever ask Mr. Kerns to vote for Mr. White yesterday? A. No, sir.

Q. You did not know that he was going to vote for him? A. He said so in my presence.

Q. Was that without any request on your part? A. Yes, sir; he told Mr. Bretz.

Q. Didn't you talk to him frequently here? A. Yes, sir.

Q. Didn't you tell him that he ought to vote for White and elect him just as soon as possible? A. I told him that when his vote would elect him I thought it was his duty to do so, after there was no possible show for your election. I advised Mr. Kerns to use that discretion.

Q. Then you made yourself the judge instead of allowing the party to judge? A. No, sir; I asked him to judge—to be the judge in that matter, as well as all other questions affecting the People's party—that he should be the judge of them.

Q. You knew of this agreement they signed? A. I heard there was one. I did not appear to be in the secrets of the caucus, though, very much.

Q. You were invited to come to that room, were you not? A. I was twice, and I appeared both times.

Q. It was understood that you were in antagonism to the seven members that believed in standing in with their candidates. A. It was understood that I was antagonistic, and not willing to allow this Legislature to adjourn without electing a United States Senator.

Q. Did you think it was in great danger by not allowing the members of the People's party to vote on the first ballot for their candidate? A. I had a different opinion when I got here. There were two Independents, and Mr. White had no claim to their vote. Those gentlemen—after I arrived here—I soon learned that one, Mr. Burke, would vote for Mr. White, and I heard that although Mr. Carlson did not, I understood he would vote for him whenever it was necessary.

Q. How did you know, before you heard Goucher was sick, that there was a chance to elect Stephen M. White? A. From the votes that were taken in the Assembly and Senate the day before—they polled sixty votes.

Q. Did you know that there was to be a Republican absent yesterday? A. No, sir; I did not.

Q. Have you asked any other member of the People's party besides Mr. Kerns, individually, and aside, to vote for Mr. White? A. No, sir; not directly. I have asked the four in a general way, when they, in their judgment, believed that you could not be elected United States Senator, or a People's party man, I asked them, in a general way, that they should then redeem their pledges to the people that sent them there and vote for Stephen M. White. I have done this openly.

Q. Did you think that a party, a party which is a national party, and had been requested by resolutions that were passed unanimously by the National and State Committees, and by the Farmers' Alliances, requesting and asking their members to stand and vote for their candidate, the candidate of their caucus, did you think it was right, after they had exhausted all the efforts within their power, did you then think it was wrong for the members of the People's party to give one vote to their candidate? A. I do not intend to go into this matter, or anything in connection with it.

Q. You went and told Kerns that I could not be elected? A. No, sir.

Q. You did not? A. No sir.

Q. You were always opposed to his voting for me at all? A. No, sir; nor Mr. Kerns will not say so, nor anybody else.

Q. Did you think you were advising him to vote for me that way, when you did not advise them to vote for me at all? A. I did not—

Q. (Interrupting.) You advised Kerns to vote for Steve White, if there was a full house, did you not? A. No, sir; he made the declaration publicly in the hotel that he intended to do so.

Q. Why didn't you say that you ought to give at least one vote to your own party candidate? A. That was my object in telling him.

Q. But that object didn't go so far as that under those circumstances he had better vote for me? A. No, sir; it did not. He could use his own judgment in that regard. But somebody else has been trying to vote him since he has been in the city.

Q. Did you learn at any time that Mr. Adams had talked with Mr. Kerns and that he gave him an absolute promise? A. I didn't know anything until I heard it testified to here. I have not talked with Mr. Adams at all.

Q. Didn't you see Mr. Adams laboring with Mr. Kerns and talking with him a long time? A. No, sir.

Q. Were you there? A. Yes, sir; but I could not see them.

Q. You took no interest as to whether the People's party men were trying to get Kerns to vote for a People's party man instead of Mr. White?

MR. MATHEWS: I think this questioning has gone far enough.

MR. SHANAHAN: Yes, I think it has been pursued long enough in this direction.

MR. CATOR: That is all.

MR. VANN: Did you ever hear me ask Mr. Kerns to vote for Mr. Cator? A. No sir.

Q. Did you ever see me swarm around him in the hotel? A. No, sir; you are one of the exceptions. You never tried to bulldoze Mr. Kerns. You took the high ground that the man was for his constituency.

Q. Do you remember any conversation with Mr. Gaffey with regard to Mr. White's election? A. No, sir; only general. I knew that Mr. Gaffey was here making his fight. I have had no conversation with Mr. Gaffey in relation to Mr. Kerns' vote that I know of.

Q. You don't remember, then, having any conversation with Mr. Gaffey in regard to Mr. Kerns? A. No, sir; the conversation I had with him came out here to-night with Mr. Gaffey. Mr. Gaffey informed me that this gentleman whom he mentioned had four votes—you remember I asked you about it—I asked you to find out what man in the People's party had a mortgage for \$4,500 on his place, and what other man had a mortgage of \$3,000 on his place, and you never reported to me or said anything, and that is the only matter I had any conversation about.

MR. CHAMBERLAIN: My name has been mentioned in this matter, and I desire to make a statement as it has been drawn in here.

MR. SHANAHAN: Very well.

TESTIMONY OF W. A. CHAMBERLAIN.

SWORN.

MR. CHAMBERLAIN: Now, I desire to say, Mr. Chairman, and gentlemen of the committee, that I came up here about the 1st of January, and that I affiliate with the People's party.

MR. SHANAHAN: Where do you reside? A. In Oakland.

Q. What is your occupation? A. Attorney.

Q. How long have you resided there? A. About five years.

Q. Well, proceed. A. There was some talk at headquarters where I was during the first week of January, about the peculiar actions of Mr. Cannon, and I heard it stated by a number of our members that there was some doubt about Mr. Kerns voting with our party, and I thought I would like to find out as to the truth—find out the truth of the matter. I think it was Thursday or Friday—it must have been about the 5th or 6th, I think, of January—I don't remember the date exactly—I went over to the Golden Eagle Hotel from the Capital, and I asked some gentleman there for Mr. Gaffey—previous to that time I heard that Mr. Gaffey had the management of Mr. White's senatorial contest in this city. Some gentleman pointed out Mr. Gaffey to me on the sidewalk, and I followed him down the street, and I asked him if he was conducting Mr. White's senatorial contest. He said he was, one end of it; I didn't ask him which end. I told him I would like to see him, and he says, you come into this saloon, and I says: "That won't do; it won't answer for me to be seen talking to you; I am a People's party man, and it might arouse suspicion." "Well," he says, "we will go up to my room; it is up in the Golden Eagle Hotel." And I went up and remained at the head of the stairs until Mr. Gaffey came up about five minutes after. We went into his room, and as near as I can remember, I asked him if he did not think that Mr. White was going to have a hard time to get elected, and he said he didn't. Well, I says, I think I know where I can get you some votes—four, perhaps. And he wanted to know where, and I says: "It is possible that some of the People's party can be induced to vote for Mr. White, and he wanted to know the price and I told him perhaps \$3,000 or \$4,000, and that perhaps some of them were in such shape

that they would take less, and I asked him if Mr. White would buy any. He said that Mr. White had not bought any yet, but he thought he would have to buy some. And that was all of our conversation at that time, and we had no conversation subsequent to that. But as to his statement that I asked him for \$400—that I did not say. The object in doing this—I had an object in doing it—and it was not to sell any of the men, but to find out if Mr. White or Mr. Gaffey was buying any votes, and where he was going to get them; and how much he was going to pay; and whether or not—I wanted to find out, principally, whether or not Mr. Cannon was mixed up with Mr. White in any way, and I had it put up in this way: That if Mr. Cannon was mixed up with him and Mr. Gaffey should say anything about buying votes, that Mr. Cannon would come over and say that some one was trying to buy votes. It seems that Mr. Gaffey did tell Mr. Cannon that some one was over there to buy votes. That was my object in going over there. I went over to the hotel at our headquarters, and I found one of our members in our headquarters, and I told him what I had done, and he objected to my doing it, and he said, "You are very foolish, because that may come out." Well, I says, if Cannon is honest he will come over here and tell us; and if he is not he will never say a word about it. Well, the gentleman advised me that I was very foolish to do it. "It may get you in trouble hereafter," he says. But I watched, and Mr. Cannon, to my knowledge, has not come over to our headquarters and said that there was somebody over there trying to sell votes. Mr. Gaffey's testimony was in the main true, but that was my object in doing it—going over there.

A MEMBER: You were never authorized to go there by any People's party man? A. No one knew it until I went there, and the object was to find out whether Mr. Cannon was true to us or working in the interest of some one else. I had it put up that if I or any one else saw that if Mr. Cannon was not true to our party, we could find it out.

Q. Did anybody offer to buy any votes from you? A. No, sir.

Q. At any time? A. No, sir.

Q. By Mr. Gaffey? A. No, sir.

Q. Or any other person? A. No, sir; I have not seen Mr. Gaffey since until the other night.

MR. ALFORD: You say your object in doing this was to find out whether or not Mr. Cannon was true to the People's party. A. Yes, sir; I had supposed that he was a member of the People's party.

Q. And you went over there to find it out? A. Yes, sir.

Q. I thought you said a moment ago it was for the purpose of finding out whether Mr. White was buying votes? A. No, sir.

Q. You were not instructed by any of the People's party to go over there? A. No, sir.

Q. You told some one about it? A. Yes, sir; immediately upon my return to the hotel.

Q. Which one of the People's party? A. Mr. Bretz. And he advised me strongly against it—said I was foolish to do it.

Q. What was it you told Mr. Gaffey about the condition of things—demanding some money immediately. A. I don't think I said a word to him about that. It was not my object to get any money out of it.

Q. You stated that, didn't you, that some money would be needed immediately? A. No, sir; I don't think I said that.

Q. Do you know? A. No, I do not.

Q. You are not sure? A. No, sir.

Q. You say you are an attorney at law? A. Yes, sir.

Q. Are you admitted to practice in the Supreme Court of this State? A. Yes, sir.

Q. How long have you lived in Alameda County? A. About six years.

Q. How long have you been in Sacramento? A. I think I came up here the last day of December.

Q. Were you acquainted with Mr. Bretz when you came up here? A. Yes, sir.

Q. Were you acquainted with any of the balance of the People's party members? A. None of the Assemblymen.

Q. Did you come up here of your own accord? A. Yes, sir.

Q. You were not sent up here by the organization of the People's party? A. No, sir.

Q. Did you hold any consultation with the People's party in regard to your action? A. I have already stated that no one knew anything about it. I had no conversation with any one about it.

Q. Did you affiliate with the People's party before the election? A. Yes, sir.

Q. You are paying your own expenses up here, are you? A. Yes, sir.

Q. Did you make any speeches for the People's party during the campaign? A. Yes, sir.

Q. Where? A. Oakland.

Q. When? Any outside of Oakland? A. I think not.

Q. You won't state positively that you did not tell Mr. Gaffey that some money will be demanded immediately. A. No, I don't remember.

Q. You won't state positively that it was not said? A. It might have been, but I don't remember it.

Q. Are you on the assessment roll of Alameda County? A. Well, I paid my poll tax last fall. I have no property.

Q. Do you pay any taxes, either real or personal, in any of the counties of this State? A. Well, on my law library. I pay that in San Francisco.

Q. Where is your law library? A. In San Francisco.

Q. Where is your law office? A. Formerly 402 Montgomery Street, but my books are stored at present.

Q. Where? A. I don't know the number; it is on Commercial Street, somewhere.

Q. Why are they stored there? A. I have given up my office.

Q. Have you ever had an office in Oakland? A. Yes, sir.

Q. Did you have your library in Oakland? A. Yes, sir.

Q. When? A. About three years ago, I think.

Q. About three years ago, you think? A. Yes, sir.

Q. What is the extent of your library? A. At that time I had the Codes and several other books—just beginning.

Q. About how many other books outside of the Codes? A. Perhaps half a dozen.

Q. You say when you removed your office from Oakland, three years ago, you removed those books to be stored—how much storage did you pay? A. I didn't say that. Mr. Chairman, I want to know if this is competent—these questions.

MR. SHANAHAN: Perfectly.

THE WITNESS: I opened an office in San Francisco.

MR. ALFORD: In San Francisco? A. Yes, sir.

Q. Where did you open your office? A. 427 Montgomery Street, I think is the number.

Q. Is that the place where your books are stored? A. No, they are on Montgomery Street.

Q. With whom are they stored? A. With Hyde Brothers—in their office.

Q. Who are the Hyde Brothers? A. They are attorneys.

Q. You have your books stored there? A. Yes, sir.

Q. What books have you outside of the Codes? A. I have quite a number.

Q. You stated about half a dozen? A. I have added since—I have bought a number of books since.

Q. How many have you now? A. I have about fifty of my own, and something like two or three hundred that I hire.

Q. Of whom did you hire the books? A. Of Mr. Hyde.

Q. You don't know the address of Mr. Hyde's office? A. No, sir.

Q. You never practiced law from his office, have you? A. No, sir.

Q. How long since you hired those books? A. About two or three years ago.

Q. You hired them at that time? A. Yes, sir.

Q. Have you ever had them out of Mr. Hyde's office? A. Yes, sir.

Q. Where did you take them to? A. To 427, I think.

Q. You took two or three hundred of Mr. Hyde's books away to 427 Montgomery Street? A. Yes, sir.

Q. How long have you had your office at 427 Montgomery? A. About four months, I think.

Q. Where did you go then? A. I moved over to 402 Montgomery.

Q. How long were you there? A. Well, since I moved from 427.

Q. How long has it been? A. Probably in the neighborhood of two years, or two and a half.

Q. Have you an office at the present time at 402? A. No, sir; I said I closed my office for the present.

Q. How long have you discontinued the holding of your office at 402 Montgomery Street? A. About the middle of November, I think.

Q. About the middle of November last? A. Yes, sir; last November.

Q. You are not practicing law at the present time? A. No, sir.

Q. You have not been practicing law since when? A. About the middle of November.

Q. Not since the middle of November? A. No, sir.

Q. What have you been doing since? A. I have been doing some collecting, and politics, some.

Q. For whom did you collect? A. For Mr. Gaston.

Q. Who is Mr. Gaston? A. He is an expert accountant, and his office is on California, between Montgomery and Sansome.

Q. What kind of an account was it to be collected? A. For services.

Q. What kind? A. Expert accounting.

Q. How many times did you collect money for Mr. Gaston? A. I didn't make a collection—I didn't make a cent.

Q. You attempted to collect money? A. Yes, sir.

Q. How much did you attempt to collect? A. I think the bill was something like \$100.

Q. Who was it against? A. John Lee Company, a manufacturing company on Mission Street.

Q. Did you ever collect any other money—excepting this \$100 that you mentioned—that is the only collection that you attempted to make, and you failed in that? A. Yes, sir.

Q. What has been your business for the past two or three months? A. Politics, and looking for a place to locate.

Q. Did you get a salary for working politics? A. No, sir.

Q. Well, did you make your living out of politics? A. No, sir; I had a little money that I earned in my business.

Q. Did you ever have a case in the Superior Court of the City and County of San Francisco? A. Yes, sir.

Q. What was the title of the case? A. Hollywood vs. Hollywood, and a number of other cases, but I can't remember any of them now.

Q. Do you remember any other? A. I cannot remember now.

Q. Was that a divorce case? A. Yes, sir.

Q. Did you succeed in getting the divorce? A. Yes, sir.

Q. What was the fee?

MR. SHANAHAN: I think that has gone far enough.

THE WITNESS: Let him go ahead if he wants to.

MR. ALFORD: Did you ever have a case in the Superior Court of the county of Alameda? A. Yes, sir.

Q. How many cases did you have there? A. I don't remember—I don't know how many.

Q. How long were you practicing—about two years? A. Where?

Q. At Alameda. A. No, sir; I was not there two years.

Q. How long were you there? A. Maybe a year.

Q. Did you ever have more than one case in the Superior Court? A. Yes, sir.

Q. About how many? A. Several—I don't know.

Q. What was the title of some of them? A. Clark vs. Clark.

Q. Was that Clark vs. Clark a divorce case? A. Yes, sir.

Q. Did you get the divorce in that case? A. Yes, sir.

Q. And you got your fee, I suppose? A. Yes, sir.

Q. What were the titles of the other cases that you had there? A. I cannot remember.

Q. You cannot remember the title of any other case? A. No, sir.

Q. Did you ever have any other case except a divorce case while you were practicing law in the City and County of San Francisco, or in Alameda County? A. Yes, sir.

Q. What was the title of the case outside of the divorce case? Do you know the title of any case outside of the divorce case while you were living and practicing law in those counties? A. I have tried a number of cases in San Francisco—a number of civil cases—one of the criminal cases was—well, I cannot remember the boy's name; it was a felony case, though.

Q. Were you employed by the defendant to defend him? A. Yes, sir.

Q. What was he charged with? A. I think it was assault to murder.

Q. Are you not sure what he was charged with? A. He was charged with assault to murder, and the charge was reduced by the jury to assault with a deadly weapon.

Q. What were the circumstances of the case? A. The young man—I had another case, though, last spring—

Q. (Interrupting.) What is the title of that case? A. The People vs. John R. Headly.

Q. What was he charged with? A. Murder.

Q. Where was it committed? A. On the corner of Diamond and Nineteenth. It was not murder; he was charged with murder.

Q. Were you the only attorney for the defendant? A. Yes, sir.

Q. Was the defendant a man or a woman? A. A man. Very likely to be, as his name was John R. Headly.

Q. Did you get your fee in that case? A. Yes, part of it.

Q. How much money did you have when you came to Sacramento this time? A. About \$50, I think.

Q. How long have you been here? A. About three weeks. I came here the last day, I think, of December.

Q. Where have you been stopping since you came here? A. I have a room on Fifth Street, and I board at a restaurant on Third Street.

Q. Have you had any business from which you drew any income since you came here? A. No, sir—well, yes, I have.

Q. What is it? I made \$5 drawing up some papers about a week or ten days ago, for a gentleman whom I had formerly known in San Francisco.

Q. Have you made any money out of politics since you have been here? A. Not a cent.

Q. This application that you made to Mr. Gaffey was purely in the interest of the People's party and nothing else? A. Yes, sir; I didn't intend to sell any votes, but the object was, as I have stated, to find out whether or not Mr. Kerns was honest in regard to the People's party—I should say Mr. Cannon? Yes, sir; Mr. Cannon.

MR. ALFORD: That is all.

MR. SHANAHAN: You stated you were at 427 Montgomery Street. A. It might have been 425 or 427.

Q. You said 427? A. It is 425 or 427, the place I moved to from Oakland—425 or 427.

Q. Isn't 427 a restaurant, and no offices? A. Well, it is my impression there are offices all along there.

Q. Did you state you were at 427 Montgomery Street? A. I don't know positively whether it is 427 or 425 it is right along there.

Q. Are you certain along there somewhere? A. Yes, sir.

Q. Well, then you were at 425 or 427, but you don't remember which place? A. Yes, sir; I don't remember.

Q. Is not 425 a shirt store? A. It may be.

Q. Gents' furnishing goods. A. It may be.

Q. Are you certain there are offices there—you don't know which of those places you were at? A. No, sir; it is 425 or 427—along there somewhere.

MR. ALFORD: Where do you board—what number on the street do you board at? A. I don't know—it is on Third Street.

Q. Where do you room? A. On Fifth.

Q. Does a lady keep the restaurant or a gentleman? A. A man and his wife—I suppose they are.

Q. Did you ever tell the lady there at that restaurant that you were the Minute Clerk of the Assembly? A. Never.

Q. Or of the Senate? A. Never told anybody that I was connected with the Legislature in any way.

Q. Do you swear to that positively? A. Yes.

Q. Mr. Chamberlain, do you not know that you have laid yourself liable by the advances that you have made to Mr. Gaffey, and the admissions you have made here? A. I don't know.

Q. Do you think so? A. No.

MR. ALFORD: Well, that is all.

TESTIMONY OF T. J. KERNS.

Sworn.

MR. SHANAHAN: You are an Assemblyman from Los Angeles County? A. Yes, sir.

Q. How long have you resided there? A. About twenty-four years.

Q. Do you know, Mr. Kerns, of any use of money, corruptly used, or used at all, to influence the vote of any person in relation to the election of a United States Senator, yours or any other vote? A. No, sir; I do not.

Q. Has any person told you of the use of money? A. No, sir; I have never been told.

Q. Was the question of the United States Senatorship raised or discussed as between yourself and Mr. Gaffey in the State Library on yesterday? A. No, sir.

Q. You saw him at that time? A. Yes, sir.

Q. Did he at that time, or any time, ever make you any offer or promise of any reward or official station—office or money—or any remuneration, by reason of your vote for United States Senator? A. No, sir; I never had any conversation with Mr. Gaffey on that subject. His conversation with me has been upon a matter of bills, and the information I wanted to get from him in relation to two bills which I introduced in the Legislature.

MR. MATHEWS: Did you hear Mr. Cannon's testimony? A. Yes, sir.

Q. What did he say to you at the seat in the Assembly yesterday before we began balloting for United States Senator? A. He came to me and said that Senator Goucher wouldn't be in the Senate that day—so he had been informed.

MR. VANN: Mr. Kerns, you went out and went to the Library—what business did you go on? A. I went to see Mr. Stephen M. White or General Mathews. I wanted to see Stephen M. White in relation to a letter I got from Mr. Dillon, and one from another gentleman in Los Angeles.

Q. Did you know where Mr. Gaffey was when you went out there? A. No, sir; I did not. I went out and had the bill with me, the one that Mr. Gaffey had agreed upon, or stated to me the day before that I would have to have an amendment made to the bill that he had already drawn up. And I didn't know what portion he wanted amended. I have been unwell since I have been here, and I consequently have had to ask others to help me; and I had this bill in my pocket and I went to Mr. Gaffey and I asked him about it, and I said, "Mr. Gaffey, I have a letter from Mr. Dillon and you can read it, and Mr. Dillon's opinion is that this bill you ask me to introduce ought not

to be passed. And that is about all the time I will have to be here. I didn't ask him where Stephen M. White was. I couldn't ask his opinion then, because I didn't have time; and I didn't see General Mathews in regard to this letter that I got from Mr. Dillon, and I wanted to see Mr. Gaffey and talk to him about that, as I had talked to him two or three times before that about this other bill redistricting the State, and Mr. Gaffey had got the vote from the Secretary of State, and I did not feel like going to hunt all that information up, and I don't remember now who it was that came up to me—some one came up and laid this information from the Secretary of State that Mr. Gaffey sent you—I don't know who it was. I didn't pay any attention to it, but it was in reference to this matter that I was talking that day.

Q. That was in regard to a matter—a bill for redistricting the State? A. Yes, sir; and another reducing the number of Superior Judges in Los Angeles.

MR. KAHN: When you left the Assembly Chamber did you know that you would meet Mr. Gaffey? A. No, sir.

THE WITNESS: I have not been asked to ask any questions here, and I think there are a great many important questions for me that have been overlooked in this matter. Now, I was going to see General Mathews and I incidentally met Mr. Gaffey, and it was so near the time of meeting—and I will tell you about Mr. Cook. It was about 11 o'clock that I received this letter that I had been looking for for some time, and the report of the Clerk of Los Angeles County, and I called Mr. Cook to look that over with me in a hurry. I wanted him to look that over with me, as I was afraid my bill would come up. And he looked it over and read it, and I said this is altogether different from what Mr. Gaffey stated. Now, I said, I had better ask Mr. White, and he said: "You had better. He has no interest in it down there now—he will be elected United States Senator, probably, and you will get an impartial opinion from him." So a few minutes after that I picked up that bill and went out, and when I got inside of the door of the Library I saw Mr. Gaffey, and I pulled out this letter and showed it to him—and that was my business there, and I suppose I was there about half a minute—thirty seconds—and I went back into the Assembly.

MR. MATHEWS: Have you any statement to make in regard to your meetings at these caucuses? A. Yes, sir; I should like to make that statement. The first week that I came here in January, the People's party met down there, and Mr. Bretz had prepared this resolution, and we all signed; they asked me to sign it—some of them had already signed it—and I asked them to read it there, and they read it over, and I asked the question, "Has this any reference to the United States Senator?" and they said "No; to the principles of the People's party in the Legislature," and had no reference to the election of United States Senator. Well, I said, "Gentlemen, I will sign it then, but if I see anything that is not right, or not in accordance with the best interests of my constituency, I will step down and out." Now, that is what I said in the presence of these men. They said that was all right, and it had no reference to the election of United States Senator. The United States Senatorship had not been spoken of; it was several days before I was flooded with these resolutions and telegrams, and the United States Senatorship was not spoken of there.

A MEMBER: Were you present when Mr. Cator was nominated for United States Senator? A. No, sir; I didn't know it until the 13th. And I don't suppose that I would have known it then, but somebody spoke to Mr. Cator, and I think I asked Mr. Jacobsen if Mr. Cator was nominated, and he said "Yes."

Q. Were you served with any notice that such a caucus was going to be called? A. No, sir.

THE WITNESS: Now, I want to ask Mr. Bretz if Mr. Adams had positively stated that I had agreed to wait ten days before I would give up Mr. Cator?

MR. VANN: Mr. Kerns, do you know that Mr. Bretz drew up this agreement we are speaking of? A. Well, I don't know. I wouldn't be certain. He had drawn up another one that was laying there, and it was discussed pretty fully, and I thought this other was in his handwriting; I just say that.

Q. You are not sure that it was? A. No, sir.

Q. Don't you remember on the evening that that was signed that we talked considerable about United States Senator? A. I think there was nothing said in regard to United States Senator, except in that question in which I asked if it had any reference to the United States Senator.

Q. Don't you call to mind that we thought that was the most important measure before the Legislature? A. Yes, sir.

Q. And if there was any party lines to be drawn, they should be drawn there? A. No, sir.

Q. You don't remember that? A. No, sir; that was my objection to signing that there, and I so stated publicly, and I think I was up on the floor about two minutes, and stated that I would not enter into any agreement on that subject.

Q. Well, you remember we all talked about United States Senator that evening? A. Well, I don't know; I was there only a very few minutes; I don't know what they all talked about.

Q. Well, did you consider, Mr. Kerns, when you came to Sacramento as a member of the Legislature, did you consider that you were a People's party man or a Democrat? A. I came here a People's party man.

Q. And consider yourself one yet? A. Well, no; because I have been read out of the party, I understand.

Q. You believe in the principles of the People's party? A. Yes; I believe in the principles of the party and spoke about them in the campaign.

Q. You believe that the principles of the party, if carried out, would be for the best interests of this country? A. Yes; I came here on the demands of the people to carry out their wishes.

Q. You think more of the principles of the People's party than of any other? A. I think more of the principles of the party than I do of the election of United States Senator—especially a man whom I don't know anything about.

MR. MATHEWS: Mr. Kerns, you stated, if I understand you correctly, that you signed that agreement with the distinct understanding that it did not bind you on the question of United States Senator? A. Yes, sir; United States Senator.

Q. That was your distinct understanding? When you signed it you reserved the right on that question? A. I did not do it because I didn't

expect to vote for the People's party candidate, but I don't propose to stand in the middle of the road until the Governor might appoint a United States Senator. Whenever I had voted long enough for the People's party candidate, then I intended to do something else.

Q. If that agreement had required you to vote for the People's party candidate, what would you have done? A. I would not have signed it.

A MEMBER: Did we not say when we signed that agreement that any time that we wished to change our minds that we would call a caucus together? A. I don't know what you did. I said I would step down and out.

Q. Wasn't that the agreement that before we departed from the agreement that we would come together and so agree? A. I didn't so understand it.

Q. Wasn't that talked of among us, that we would come together and so dissolve the agreement? A. I do not know what the rest talked of. I was there a very short time at the meeting. I was feeling very badly all along and was not there many times.

Q. I am aware of that. You have been unwell and with us very little; but don't you call to mind that we did talk about that at that time, or upon different evenings? A. Well, there was something said about that, but I think the reservation that I made publicly and openly, that it covered the ground, and that I didn't have anything further to say on that subject.

Q. Do you desire to make any explanation about the conversation that you had with Mr. Cannon? A. Well, my friend Cannon says he tried to take me out of the mob. I tried to take him out of the mob. Mr. Batchelor was there talking to him very earnestly, and I heard him say he was trying to vote Kerns, and I stepped up and told him that he need not be annoying Mr. Cannon on that subject, that I was doing the voting and not Mr. Cannon. And four or five got around me, and Mr. Bretz got pretty earnest, and said something that I didn't like, and I told Mr. Bretz that I didn't have any respect for his opinion that he expressed, and he walked away. I considered that Mr. Bretz had not treated me gentlemanly for some little time, and I had very little respect for anything that he said. Consequently, he walked away when he found out I was in no better humor than he was. Mr. Adams came and spoke very pleasantly, and so did Mr. Barlow, and I told them when they talked in that way I was willing to talk with them in that spirit.

MR. VANN: Do you remember that I ever urged upon you to vote for this man or that man? A. No, sir.

Q. Did you give them to understand that you wouldn't vote for Mr. Cator? A. I told them I would do just as I pleased, and I want to state here about that. I made no promise to Mr. Adams, and I can prove it by the whole course of the proceedings that I did not promise to do anything. Mr. Barlow came and talked to me very pleasantly after Mr. Adams went away. I think Mr. Adams had been there twice—and Mr. Adams came down and said: "Give one more vote for Mr. Cator;" and so did Mr. Barlow. He said that I had not cast one straight vote for Mr. Cator yet, that I only gave the vote in the Assembly. And I told him that I was not going to make any promises now, and that was the statement that I made. And I never promised to hold ten days at no time. I said to Mr. Barlow, and to Mr. Adams, that

they treated me like gentlemen, and I felt kindly towards them, and it all their feelings were that way towards me I would probably have voted for Mr. Cator once more, although it is said I am very timid, but I have never been coerced into anything.

MR. CATOR: Did Mr. Adams speak to you about this agreement yesterday? A. Yes, sir.

Q. He reminded you of the fact that it had been signed? A. Yes, sir.

Q. Did you, when he called that fact to your mind, say that it had nothing to do with the Senatorship? A. Yes, sir.

Q. You told him that? A. Yes, sir.

Q. Yesterday morning? A. Yes, sir.

Q. Didn't Mr. Adams say to you, among other things, finally, about 11 o'clock, ask you how, in the name of the common religion that you both professed, that you could avoid acting under that agreement, and beseech you to stand at least for ten days, and didn't you promise absolutely that you would vote for me all day yesterday? A. No, sir. I saw your statement in the "Examiner" on that subject.

Q. You did not make such a statement? A. No, sir.

Q. To Mr. Adams? A. No, sir.

Q. Nothing of the kind? A. No, sir.

Q. If Mr. Adams swears to that statement, will you say that it is not so? A. Yes, sir; and if he comes up here and says I agreed to stand ten days, I will say it is not so.

Q. Did he speak to you at all in the name of the common religion that you both profess? A. Yes, sir; with all the eloquence and ability that he has.

Q. Didn't you promise him to at least vote for me all day yesterday? A. I did not get in that prayerful spirit that you credit me with, and I told him I would not.

Q. Have you been on very friendly terms with Mr. Adams? A. Yes, sir.

Q. You regard him very highly? A. Yes, sir.

Q. You consider him an honest and upright man, don't you? A. As far as I know, he is.

Q. You say that you did not say anything of that kind to him? A. No, sir; I didn't promise to stand one day nor ten days.

Q. When he asked you how you could, in the name of the common religion that you both profess, how you could without giving me one vote in the Joint Assembly, stand by your agreement, and asked you to stand by me that day, and also for ten days, didn't you promise him at least that you would stand all day yesterday? A. No, sir; I didn't promise anything.

MR. ALFORD: You didn't consider it a part of your religious duty to vote for Mr. Cator.

MR. CATOR: I never asked Mr. Kerns to vote for me or any other man.

A MEMBER: Do you positively assert that Mr. Cannon didn't tell you to go out and see Mr. Gaffey? A. Yes, sir; it had no reference to Mr. Gaffey at all.

Q. Didn't mention his name? A. No, sir. I will tell you every word. I guess I can tell the balance of it. He said to me: "Mr.

Goucher is sick and will not be in here, and do not let these fellows bulldoze you any more," and I said, "My mind is already made up."

[The further hearing of this investigation was here continued until to-morrow, Friday, morning, at 8:30 A. M.]

FRIDAY, January 20, 1893.

MR. SHANAHAN: Mr. Cator, take the stand.

MR. CATOR: Do you desire me to take the stand?

MR. SHANAHAN: Do you desire to make any statement?

MR. CATOR: Not the slightest. I came here after consulting with eminent lawyers, as I have stated, who said there was no impropriety in my appearing for Mr. Bretz.

MR. SHANAHAN: Does any member of the committee desire to ask Mr. Cator any questions?

MR. MATHEWS: I have no questions to ask.

TESTIMONY OF B. W. BATCHELOR.

Sworn.

MR. CATOR: Where do you reside? A. Los Angeles.

Q. How long have you resided there? A. A year and four or five months.

Q. Formerly a resident of New York? A. Yes, sir.

Q. Do you know T. J. Kerns? A. Yes, sir.

Q. What is your position in relation to the People's party in Los Angeles County? A. I have been the County Chairman of Los Angeles County since the organization of the party.

Q. And you are now? A. Yes, sir; twice elected.

Q. The party cast over three thousand votes in that county? A. Yes, sir; three thousand for the national ticket and about four thousand for the county ticket.

Q. You know T. J. Kerns? A. Yes, sir.

Q. You were present when he was nominated? A. Yes, sir.

Q. Did he accept the nomination of the People's party formally? A. Yes, sir.

Q. Did you see Mr. Kerns and have a conversation with him on the subject of the United States Senatorship? A. Yes, sir.

Q. Where? A. In my place of business.

Q. State what that conversation was? A. In substance about as follows: I asked Mr. Kerns about the senatorial fight, and he first stated to me that he had word from Sacramento. He had a printed list showing that the Democrats were in the majority. I said I had heard different from that—that the People's party would have the balance of power, and Mr. Kerns said that he was sorry that he had received the Democratic nomination for the reason that he believed he could have been elected by the People's party straight. And I asked him regarding his position, and he said I am a People's party man, first, last, and all the time.

MR. MATHEWS: Mr. Chairman, is this pertinent to our inquiry?

MR. SHANAHAN: No, it is not; but we are allowing a wide range.

THE WITNESS: Mr. Kerns stated I am a personal friend of Mr. White's, during my conversation with him, and I said that we were all friendly to Mr. White, providing the People's party could not elect a man of their own—that in that case we were all friendly to Mr. White. He said to me, positively, that when he came to Sacramento, he would abide by the decision of our party; and as I said before, he said he was sorry that he had received the nomination from the Democratic party, because he would be elected without it, he thought.

Q. Were resolutions passed by your committee asking him to vote for me? A. Yes, sir; on the 28th of December, and forwarded to him.

MR. MATHEWS: Did you visit Mr. Kerns immediately after balloting for United States Senator on Wednesday? A. Yes, sir.

Q. What did you say to him? A. I said to him, if he would change—I told him the condition that he was in, so far as our people were concerned.

Q. Did you reprimand him? A. Nothing further than that I said this matter would be telegraphed all over the country as traitorous.

Q. Call him a traitor? A. No, sir; I simply said it would be telegraphed all over the country.

Q. You were not probably aware that you were holding him responsible for an act of the Legislature of California for which he is not to be held responsible by any one, in or out of it? A. No, sir.

Q. You were trying to influence him by that kind of a threat? A. I don't call it a threat. I knew the position the gentleman was in, and he had a right to change it if he desired.

Q. Yes, but it is not the right of any man to go and say that "you will be looked upon as a traitor."

MR. SHANAHAN: Where did you say that it would be telegraphed all over the country? Where did you say that he would be looked upon as a traitor? A. Well, I was going to say the reason why was because I talked with him on that morning, and said the man who would leave his party after he had pledged himself, that it was entirely wrong, and it created a bad impression, and I wanted to impress that upon him.

Q. Were you seated by Mr. Kerns, or near him? A. Yes, sir; I was back of him.

Q. During the time the two houses were in joint session? A. Yes, sir.

Q. What was your purpose there at that time? A. Partly as a spectator, and I came from Los Angeles with the resolutions to ask Mr. Kerns to stand for our candidate.

Q. Did you think it necessary to stand there? A. No, sir; it happened that four or five of us were there, and when I went in I didn't know where Mr. Kerns' seat was; and not until I was seated did I know where he was.

MR. MATHEWS: What did you state to him; what did you say to Mr. Kerns when you went to his desk? A. Well, I cannot remember. Of course, a man can't remember these things. I don't suppose Mr. Kerns can remember it. I thought it was a very unfortunate position.

Q. Well, you have already stated that you said that—you said a "traitor?" A. Well, I might have said a "traitor."

Q. In view of the possibility of being looked upon as a traitor—A. (Interrupting.) I think I told him that it looked very bad, in the heat of the conversation. I don't know the exact words.

Q. You wanted him to change his vote? A. Yes, sir.

Q. And said he would be regarded as a traitor if he left it as it then stood? A. I may have said that; I am not positive.

MR. MATHEWS: That is all I desire to ask.

MR. CATOR: You had some conversation with him before that morning? A. Yes, sir.

Q. Did he ever intimate to you in any way that the agreement which he signed did not include the United States Senatorship? A. There was some talk about that, but I cannot call it to mind.

Q. Did you belong to the Farmers' Alliance of Los Angeles? A. No, sir.

MR. SHANAHAN: There was some talk of the agreement that was signed—that it did not include United States Senatorship? A. Not as I understand it. There was some talk, but what it was I don't know.

Q. What was the talk after he signed the agreement—that he should not be bound to vote for the United States Senator? A. I don't remember that.

Q. You say there was some talk? A. Well, I cannot remember the talk, because several of us talked about that matter and I cannot remember whether Mr. Kerns brought it up, or some one else.

Q. Did Mr. Kerns say he would vote for the People's party candidate? A. He said he would abide by the majority of the People's party—of the Assemblymen. He wouldn't pledge himself in any way, but he would abide by the decision.

Q. Was that before the election? A. After the election.

Q. I am asking you before his election? A. No, sir; he was never asked by any of our people—by any one that I know of.

Q. He was never asked—he was elected without any pledge, so far as your knowledge goes? A. Yes, sir.

Q. And you are the Chairman of the People's party County Committee? A. Yes, sir.

Q. Up to that time he was never pledged? A. No, sir.

Q. Well, after that time you sent him some resolutions, did you? A. Yes, sir.

Q. Stating, perhaps, what you believed he should do, and the People's party desired him to do? A. Yes, sir.

MR. CATOR: I understood you to say that you were in the convention—was that a regular People's party convention? A. Yes, sir; the convention nominated another gentleman, that portion of our convention—

Q. (Interrupting.) Well, it was a regular People's party convention, was it? A. Yes, sir.

Q. And he accepted the nomination at their hands? A. Yes, sir.

Q. Didn't he associate with the People's party, and act as a member of the People's party in that county, also? A. Yes, sir.

Q. And declared his allegiance to it? A. Yes, sir.

Q. In opposition to all other parties? A. I should think so.

MR. SHANAHAN: What do you mean by that? A. Well, I should judge from the general talk of Mr. Kerns that he considered that our principles were not included in the principles of other parties.

Q. Did you ever hear him say he was against the Democratic party or any members of it? A. No, sir; he simply said he was sorry he received the nomination from the Democrats.

Q. For what purpose did you come here? A. I came here with these resolutions—they were passed requesting Mr. Kerns to stand firmly with the People's party—as well as a spectator; and as well as that we telegraphed.

Q. Do you know what induced them to believe that Mr. Kerns was not going to do it, to stand by the People's party candidate? A. Yes, we heard that great pressure was being brought to bear upon him, and we had every reason to think that he would vote for Mr. White, knowing his personal friendship for him.

Q. When you arrived on the ground were these apprehensions confirmed? A. Rather confirmed. Still he would not tell me whether he was going to vote for our candidate or not.

Q. Still you were led to believe that he was going to vote for Mr. White? A. No, sir.

Q. Well, you were in doubt when you left Los Angeles and when you arrived here you were strengthened in that belief, and you thought that he was going to vote for Mr. White? A. Well, I had my doubts.

Q. What time did you arrive here? A. 10:40 o'clock, Monday night.

Q. Have you heard the testimony of all the witnesses in this matter? A. Yes, sir.

Q. Did it seem to you to be developed that the members of that party expected Mr. Kerns to vote for Mr. Cator up to the very moment that his name was called? A. Yes, sir.

Q. Did that expectation in you increase with them for two days previous—was not that sufficient to give you to understand that your apprehensions were not justified as entertained before you arrived here? A. No, sir.

Q. You don't believe, then, that they were properly informed on the subject? A. For this reason, that there were so many doubts in the matter. Early in the morning I doubted as to how Mr. Kerns would vote—all of us doubted as to how Mr. Kerns would vote. And Mr. Adams talked with him, and I was then told of that conversation with Mr. Adams, which led me to believe that Mr. Kerns would stay with us at least ten days, after talking with Mr. Adams. That of course changed my mind again.

Q. Now, some members of the People's party drafted some resolutions to bring here for the purpose of pressing upon Mr. Kerns, if I understand this—and the evidence of all these members who have testified here—the evidence here is that they confidently expected that Mr. Kerns was going to stand by their nominee, and didn't have any grounds to believe that he would not until the time he voted for Mr. White? A. Oh, no; there were doubts early that morning.

Q. Well, this was Monday you arrived here? A. No, I made a mistake in saying Monday night. I left Los Angeles Monday night and arrived here Tuesday.

Q. Well, Mr. Kerns voted for Mr. Cator that day? A. Yes, sir.

Q. How did you know that it was doubtful how he would vote? A. I received dispatches.

Q. From whom—can you name any who sent the dispatches? A. Yes, I received one from our State Chairman, Mr. Wardell.

Q. Any other telegrams? A. No, sir.

Q. Any from Mr. Cator? A. No, sir.

Q. You got this telegram when? A. I think I received a letter and also a telegram from Mr. Wardell.

Q. A letter and telegram? A. Yes, sir.

Q. Did Mr. Bretz telegraph to you? A. No, sir.

Q. Or any other member of the Legislature. A. No, sir.

Q. Just Mr. Wardell? A. Yes, sir.

Q. That was the only information you had on the subject? A. That is the later information I had.

Q. You are representing your party—the presumption is they pay your expenses to come here? A. No, sir; they do not. I pay my own expenses.

Q. Have you destroyed this telegram? A. No, sir; I think it is in my valise in the hotel, and yet it is possible that I have not got it at all.

Q. Was it dated from this city or San Francisco? A. Sacramento.

Q. What line—Postal line or Western Union? A. Postal.

Q. Did you state that you received that telegram Monday afternoon?

A. Yes, sir; Monday afternoon.

MR. CATOR: You can give the substance of it if you want to? A. Yes, I can remember pretty well.

MR. KAHN: You say you received a telegram Monday afternoon? A. Yes, sir.

Q. That was the first intimation that you had that Mr. Kerns was probably not going to vote for the People's party candidate? A. No, sir; I received a letter previous to that.

Q. From whom? A. Mr. Wardell.

Q. The same purport as the telegram? A. Yes, sir; only the telegram was a little more urgent.

Q. Have you got that letter? A. I don't think I have got it here in the city.

Q. When did you receive that letter? A. On Monday morning.

Q. Monday morning? A. Yes, sir.

Q. On the same Monday morning that you received the telegram?

A. Yes; I received the telegram in the afternoon.

Q. Of that day? A. Yes, sir.

Q. Now, were those resolutions passed on Monday night? A. Yes, sir.

Q. At what time? A. About half-past nine.

Q. Who drafted those resolutions? A. They were drafted by the—well, the resolutions were called for by the members present, and they requested the Secretary to draw them up, and he drew them up while the members were talking about them.

Q. How many members of the party were present when those resolutions were drafted? A. Anywhere from seventy-five to one hundred, I should say.

Q. What time were they drafted? A. At about half-past nine.

Q. They were drafted about half-past nine? A. Yes, sir.

Q. And you left on the 10:40 train to bring them up here? A. Yes, sir.

MR. SHANAHAN: Did the Chairman of the committee draw the resolutions? A. No, sir; he didn't have anything to do with the resolutions.

Q. Dictate them? A. No, sir; if I dictated them they would be stronger than they are now.

MR. CATOR: There were resolutions previous to those passed by the County Committee? A. Yes, sir.

Q. In the full County Committee? A. Yes, sir.

Q. And passed unanimously? A. Yes, sir.

Q. These resolutions that you speak of were subsequent ones? A. Yes, sir.

MR. KAHN: What induced you to pass those resolutions at the early meeting? A. They were resolutions desiring that all the People's party men vote first, last, and all the time for Thomas V. Cator.

Q. When those resolutions were passed had you heard that there was any doubt about Mr. Kerns? A. No, sir; not at that time. At that time we felt safe.

MR. CATOR: Similar resolutions were being passed in all the counties? A. I understand they were by all the County Committees in the State.

A MEMBER: Did you say there was some question on the part of some of the other Assemblymen as to whether or not they would consider they were bound to vote for the People's party candidate for United States Senator—what did you say about that? A. After my arrival here, I saw there was a general talk among all of us here regarding those resolutions, and as to what Mr. Kerns said, I don't remember.

MR. SHANAHAN: You don't know what Mr. Kerns said? A. No, sir; I do not in that matter.

A MEMBER: Did you receive any letter from Mr. Bretz in regard to this matter which would lead you to believe that Mr. Kerns was not going to vote for the People's party candidate? A. No, sir; and I never met the gentleman until on my arrival here.

MR. CATOR: Didn't these doubts that were expressed give rise to rumors, and were not these rumors— A. (Interrupting.) Yes, sir.

Q. That was the cause of those doubts? A. Yes; and furthermore, from a conversation that I had with Mr. Cannon confirmed me in my opinion.

Q. Did you hear rumors that night after your arrival here that it was plain that Kerns' vote had been gotten that night? A. Yes, sir.

Q. And was that the cause of this surrounding him at the time you say he would not give any promise, either one way or the other? A. Yes, sir; that is the time when the People's party mob, as it has been termed here, surrounded him.

MR. SHANAHAN: What time of the day was that? A. About 9 o'clock.

Q. The day of the Joint Convention? A. Yes, sir.

Q. You could not get anything satisfactory from him, that is to say, as to who he would vote for? A. No, sir.

A MEMBER: Do you know of any money having been used in connection with this matter? A. No, sir; I do not.

A MEMBER: At 9 o'clock in the morning did you expect him to vote for Mr. Cator? A. I had some hopes, but I was in doubt.

Q. He never promised you that he would? A. No, sir.

MR. CATOR: Not to you personally? A. No, sir.

Q. Well, I understand that these doubts were removed by subsequent conversations had with Mr. Adams? A. Yes, sir.

A MEMBER: Were you present when these drastic resolutions were published which I see here in the "Examiner"? A. Yes, sir.

Q. Who drew them up? A. I was present when they were read. I think only the members of the People's party were present.

Q. You don't know who the author was? A. I was there at the reading, and also the signing, but I don't know who the author is.

Q. You don't know? A. No, sir; there were different suggestions and corrections made in them, and so on.

Q. The author was not a member of the Legislature—or was he? A. I judge it was members of the Legislature that had the handling of it; I so understood.

Q. Were you present when these resolutions were drafted? A. No, sir.

Q. Do you know who drafted them? A. Different members of the Legislature, I suppose.

A MEMBER: I would like to ask Mr. Bretz who drafted those resolutions. Mr. Bretz, who drafted those resolutions?

MR. BRETZ: Well, I think that the first outline was drawn or suggested by Mr. Cator, and we afterwards took them and entirely remodeled them, and gave them an entirely different expression from the original resolutions.

Q. Who wrote them up finally? A. I think Mr. Jacobsen.

MR. BRETZ: I make no appeal here that I acted under excitement. I did it on my own accord, and the members of the People's party were not aware of it. I did it wholly upon my own responsibility, and from that day to this I have not changed my opinion, but still stand to that opinion. I am willing to abide by the consequences of this Legislature. If this Legislature sees fit to reprimand me or expel me, all right. If they see fit to expel the whole body, we will all be happy.

MR. SHANAHAN (to Mr. Batchelor): You had a conversation with Mr. Kerns? A. Yes, sir.

Q. How long before the election for United States Senator did this conversation take place? A. About a month or two—seven or eight weeks.

Q. About the 8th of November? A. I should think so, but yet it may be later than that.

Q. Are you positive you saw Mr. Kerns at that time? A. Yes, sir; in the evening—on a Wednesday evening, but on what date I cannot say.

Q. Did you ever see him prior—that is, after his election, down to the convening of the Legislature? A. No, sir.

Q. Isn't it a fact that you saw him in your place of business? A. I think I saw him in December.

Q. Isn't it a fact that you never saw him only in your place of business? A. Only one time between the election and the convention.

Q. Is it a fact that that meeting took place two or three days before the election of the United States Senator, instead of seven or eight weeks ago? A. It was seven or eight weeks prior.

Q. It was then four or five days before the election of United States Senator— A. (Interrupting.) It seems to me it was three or four weeks. I may be mistaken. It was between the election of Mr. Kerns and his coming to Sacramento. I know, because I asked Mr. Kerns when he would be in Los Angeles again, and he said he would be up and call on me.

Q. What caused you to come up here? A. By direction of the committee in Los Angeles. They directed me to come here.

Q. Why? A. To see if we could prevail upon Mr. Kerns to remain true to the People's party; and also to see Mr. Cannon, and see if he would not hold Mr. Kerns.

Q. Well, according to that, your people knew that there was a grave doubt as to how Mr. Kerns would vote—as to whether he would vote for the People's party candidate? A. For the reason that we received a telegram and letter on that day expressive of that.

A MEMBER: Are you a member of the Alliance, Mr. Batchelor? A. No, sir.

Q. You said, I believe, in your evidence, that there was a resolution passed by the Alliance, asking Mr. Kerns to vote for Mr. Cator? A. Yes, sir.

Q. Did you see that resolution? A. No, sir.

Q. Who is the Secretary? A. Colonel Bridge.

Q. He told you? A. Yes, sir; and he told me they were unanimously passed and forwarded to Mr. Kerns.

Q. Do you know of any others having been passed by the Alliance throughout the State? A. Yes, sir; several of them.

Q. Do you know of them in a general way? A. Yes, sir; I never knew of any of them being passed contrary—desiring it to be the other way.

Q. You don't know of any People's party men in Los Angeles that asked Mr. Kerns to vote for Mr. White? A. No; not personally, only he stated that Mr. Dillon did.

Q. You never had any conversation with any People's party men that requested Mr. Kerns to vote for Mr. White? A. No, sir; we all agreed to it, that if we could not elect a man of our own we wanted Mr. White. I mean that the People's party, as a rule, unanimously wished Mr. Kerns to vote for their nominee until it became apparent that he could not be elected. Every meeting we had was that way.

MR. SHANAHAN: But if you could not elect a man of your own, you were to vote for Mr. White? A. Yes, sir.

Q. Who was to be the judge when they should change? A. We took it that they were to be the judge.

Q. Was there any express agreement to that effect? A. We felt safe on that—that the agreement would be adhered to. We knew of the agreement.

TESTIMONY OF A. BRETZ.

Recalled.

A MEMBER: You had no communication with Mr. Wardell as to Mr. Kerns being doubtful? A. Well, none particularly, except in a general way.

Q. How in a general way? A. In general conversation when a number of parties were present.

Q. About when? A. Oh, well, that matter was discussed all along. Some thought that there might be a pressure brought to bear, and it was generally understood that Mr. Cannon came here—his declaration was that he came here to elect a Senator from Southern California, and he was going to stay until it was done; and we were aware that he was using his influence upon Mr. Kerns, and we sometimes discussed that question—whether he could prevail upon him or not. And sometimes we thought he would prevail and sometimes not—just as the Democrats would do under similar circumstances.

Q. Can you give us a definite idea as to how long before the election of United States Senator your people began to discuss the question of Mr. Kerns being doubtful? A. Not so much about his being doubtful as the influence Mr. Cannon might bring about, for it was generally known that his utmost endeavors were being put forth to lead the Populists over to the Democracy, and he came into our headquarters and made a speech really to that effect—that it would be well to vote for Stephen M. White—to vote for a Democrat—and to be true to their constituency.

Q. You testified yesterday that up to the morning of election for United States Senator you had no idea— A. (Interrupting.) I had no idea. I believed that our men would stay with us ten days at least, until I heard his declaration. Yet we were in fear. But my opinion was that Mr. Kerns would stay at least ten days.

A MEMBER: Where did you first meet this man Chamberlain? A. Oh, during the campaign in that neighborhood; he came into our camp and secured the nomination for a Justice of the Peace.

Q. He did? A. Yes, sir. I knew of him previous to that, but there is where I got more intimately acquainted with him.

Q. About how long have you known Mr. Chamberlain? A. Well, perhaps I knew him—well, perhaps two or three years.

Q. Do you know whether Mr. Chamberlain came to Sacramento under the authority or direction of any of the officials of the People's party? A. No, sir; none whatever.

Q. Are you aware that Mr. Chamberlain before you heard him testify here on the stand last night, that he had a conversation with Mr. Gaffey, and said that he had four People's party members for sale? A. Yes; he came back and told me of it.

Q. Did you then communicate that to any other member of the People's party? A. No, sir; I was ashamed of it, and told him he had made an ass of himself, and perhaps that it would be used against us.

Q. You don't know any of the representatives of the People's party who have any mortgages on their places? A. No, sir.

MR. CATOR: Was not every possible endeavor made by myself and every one that you knew of in our party in this State except Cannon—every possible effort to get the People's party representatives to stand solid? A. Yes, sir.

Q. And was it not confidently believed by at least seven of those members, down to the time this vote was taken, that there was a possibility of electing our own man? A. Yes; and I still believe that if Mr. Kerns had proved true to us and the Republicans proved true to themselves, that we would elect one.

Q. Did you have any choice? A. We thought it was a choice to send a Populist or a Democrat, and we believed that from the reputation that the other two parties bore that our party would prove successful.

MR. SHANAHAN: In what way did you ever expect to get a majority if every party man should stand true to his party? A. It is the privilege of any candidate for United States Senator to withdraw, and it was my opinion, and I am of that opinion still, that when the time became apparent that neither party would get it, that the Republicans would withdraw their candidate and support the Populists.

Q. Wasn't it made apparent that no party could elect after the first vote? A. It was apparent if that vote remained.

Q. Well, you presumed it would be all right if any of the members of other parties came over to your candidate? A. Whenever it was impossible to make a selection or a compromise; just as I should feel it my duty to go to the Democrats under the same conditions.

MR. CATOR: You mean by that that any party is at liberty to release its members and let them go where they please? A. Yes, sir.

A MEMBER: Will you please state to the best of your recollection the exact language that Mr. Chamberlain said to you when he returned from Mr. Gaffey. A. He came back and says, "I think I have put up a job on old Cannon." I think I said, "What have you done?" Well, he went on to state that he went over to see John Gaffey, and he says, "Now, if Mr. Cannon is true, why Mr. Gaffey will go to him and say that there is a man over here in your ranks who claims that he is a People's party man, and he is for sale. And if he is true—if Cannon is true—he will come over and tell us to investigate it." And I said, "Mr. Chamberlain, you have made an ass of yourself."

Q. I would like you to state what was said between him and Mr. Gaffey—the proposal? A. Substantially the same as he said here last night; that he had an interview with Mr. Gaffey, and Mr. Gaffey had said in that conversation that they had not bought any votes yet.

Q. The interview was that he told Mr. Gaffey that there were four members of the People's party that he thought could be bought? A. I don't know that he said that to me. He said four that he told him that he could control—control some of the People's party votes.

Q. Did you understand that he could control them through corrupt influences? A. Yes, sir.

Q. You did not understand from his report that he proposed to sell those votes? A. Yes, sir; from his conversation I would infer that he intended to sell the votes.

Q. To sell four votes? A. That was the inference.

Q. That he made to you then, or the statement he made last night? A. Yes, sir.

Q. He then stated to you that he proposed to sell four votes to Mr. Gaffey, and that Mr. Gaffey had said that White was not buying votes? A. I think, substantially the same thing.

Q. And you made no report of this conversation to any human being? A. No, sir; never mentioned it to any one. I told him for God's sake to keep his mouth shut, and make no such propositions of this kind, as it would come back to us and be a detriment to himself and party.

Q. And you think you were justified in keeping that most extraordinary statement from your party and your fellow members of the Legislature? A. Well, I didn't feel that it was any particular secret.

Q. But you kept it a secret? A. Yes, sir, for I thought that would be the end of it.

Q. Had Mr. Chamberlain intimated to you in advance of this interview that he proposed to hold it? A. No, sir.

Q. You have known Mr. Chamberlain several years? A. I have known of him.

Q. And have you known of him as regards his reputation? A. Nothing.

Q. You don't know whether it is good or bad? A. No, sir; I don't know anything derogatory to him.

Q. And notwithstanding this fact, that he proposed to sell four votes of the People's party, you allowed him to appear here as your attorney?
A. He is not my attorney, and has not been appointed as my attorney.

Q. He stated that here last night—that he was associate counsel?
A. It is not true, and the only reason why I did not deny it at the time, I thought Mr. Cator had asked him to appear. I said to Mr. Chamberlain this morning, "What the devil did you want to stick yourself in there as my attorney?" He says, "I see now I made a mistake."

Q. Yes; I should say so. And it appears to me that you owe it to yourself, Mr. Bretz, and I am giving you an opportunity to explain to this committee how it is you ever permitted yourself to sit there in your seat when a man who had committed an infamous crime like this, that Mr. Chamberlain had stated to you and the committee here, which is an infamous crime, and notwithstanding you suffered him to sit there and state that he was your attorney, and it was not contradicted; and now he is repudiated in view of the fact that it is known that he has done so? A. I didn't consider it a crime, as he went there as a detective; and any pretense that a detective makes cannot be construed as a crime.

Q. What harm would there be in your stating to your party that Mr. Chamberlain went out on a detective mission and failed, if you did not think it was any harm? A. I did not think it was worth giving any attention to. I simply upbraided him for doing so.

Q. When he made his report to you did he go into the details that he mentioned here last night—that two members were very much embarrassed? A. No, sir.

Q. Did he state at the time that he said to Mr. Gaffey that a little ready money would be handy? A. No, sir.

Q. That part he omitted? A. He had not got very far in his statement—

A MEMBER (interrupting): Did you make any overtures to the Democratic party to obtain their support? A. Yes, sir.

Q. What was the effect of them? A. The first proposition to the Democrats was if they could not elect their own man they should come in and support me, and the particular reason I gave to them, that the Republican party man was not a fit man to go to the Legislature—and they accepted the proposition in this way: That if I would offer to vote for a Democratic Senator they would support me, and I wouldn't agree to that, as I thought I might be making a bad bargain, and I might be entering into a scheme to send a scoundrel to the United States Senate; and finally they agreed with me, that if I would agree, in the event that the vote depended on mine, between a Democrat and a Republican, that I should support the Democratic nominee, and I agreed to that, but never as against my own nominee. That agreement is here.

MR. CATOR: You asked to have that agreement made? A. Yes; I wanted it put in black and white, to obviate any misconception that might be put on it subsequently.

A MEMBER: Did you ever write a letter to Mr. Foote? A. Yes, sir.

Q. Do you know the substance of that letter? A. Yes; I wrote that letter at the request of Mr. Laymance, the Chairman of the County Central Committee of the Democratic party. The letter is substantially

this: That of the Democratic candidates, far as known, he is my preference—Mr. Foote—and is still my preference, and I would vote for him more cheerfully than I would for Stephen M. White.

Q. Did you ever offer to vote for a Democratic candidate for Speaker, in case you were to be appointed to some position on some committee, or Chairman of some committee? A. No, sir.

Q. Never agreed to vote for any man? A. I received communications from Mr. Mathews, Mr. Gould, and Mr. Shanahan, and I said to each one that any man who received my support would have to place me upon the Committee on Corporations. I never said that I would vote for them.

Q. You did not understand that that was a request? A. It was to be understood that I was to be a member of the committee.

Q. A member, or the Chairman? A. In one instance, perhaps, the Chairman.

Q. You didn't demand that in every instance? A. I don't know as I did, but I know I did in one instance.

Q. You may have done it in every instance? A. I may have; I don't know. I had some important measures, and I wanted to see those measures go through the Assembly promptly, and I wanted to be on the committee, and I would have said the same thing to a Republican if he had asked me for my support.

TESTIMONY OF P. R. ADAMS.

Sworn.

MR. CATOR: Where do you reside? A. Santa Cruz County.

Q. What is your occupation? A. I am an agriculturist.

Q. And a member of the Assembly? A. Yes, sir.

Q. And elected by the People's party, with the Democratic indorsement? A. Yes, sir.

Q. Did you make the acquaintance of Mr. Kerns since you came here? A. Yes, sir.

Q. That is the first you knew of him—since you came here? A. Yes, sir.

Q. Were you present when this agreement was signed? A. Yes, sir.

Q. Mr. Kerns was present? A. He was.

Q. Was there any statement made at that time by him or others that this agreement was not to include the United States Senatorship? A. No, sir. We had a little discussion over the matter, in which there was something in regard to the Senatorship referred to by Mr. Kerns—he referred to the fact that he did not wish to place himself in the position where he could not finally change if he wanted to. There was a verbal agreement between us. I was in the same position that Mr. Bretz was and Mr. Kerns, owing something to the Democratic party, and we agreed that we should go for the Democratic party after we would dissolve our allegiance from this arrangement, and vote for our candidate, and my candidate would be Mr. White after that.

Q. This conversation at the time was in regard to preventing the Governor from appointing? A. Yes, sir.

Q. Was it understood if there was any release it was to be by the caucus? A. Yes, sir.

Q. Therefore, it was expressly understood that it did cover the United States Senatorship? A. Yes, sir.

Q. Now, Mr. Adams, on the morning of the 18th of January, about 11 o'clock, were you in the Assembly Chamber? A. Yes, sir.

Q. And was Mr. Kerns there? A. Yes, sir; he was.

Q. And did you have a conversation with him relative to his duty to the People's party under that agreement? A. I did; and the first conversation that I had with him on that subject.

Q. Did you call that agreement to his mind in that conversation? A. Yes, sir.

Q. When you called that agreement to his mind in that conversation, did he make any statement to the effect that it did not cover the United States Senatorship? A. Yes, sir.

Q. State the conversation that occurred between you and him? A. I don't remember all of it. I remember this part of it: When I came into the Assembly Chamber I was informed that Mr. Kerns would fall, or at least the party said he would, and I had always hoped that Mr. Kerns would give us a show and stand with us a reasonable length of time; and I went to Mr. Kerns, and I said to him that for his own sake to stand. I says, "If you fall to-day it will go all over the State, whether true or not—whether you have been bribed or not"—or words to that effect. And I desired that he should not do it. I asked him to stand for the sake of his party that first nominated him. I said, "In the name of the Christianity that we both represent, will you not vote with us to-day?" After some other conversation that I do not now remember, and that is perhaps irrelevant to this, finally Mr. Kerns said he would vote with us. I said, "Will you vote with us every vote to-day," and he says, "I will." So I left him, and went to Mr. Cator, and said that "Mr. Kerns is all right for to-day, and probably we can hold him for ten days."

Q. Did you communicate this to other members? A. I did; I spoke to Mr. Barlow.

Q. That was generally understood by reason of this promise to you that we were all safe? A. Safe for the day.

Q. Now, how long after that was it that I communicated to you that Mr. Kerns had just gone into the Library—or that it was reported to me that he was with Mr. Gaffey—and asked you to go in there? A. I could not say how long. Perhaps more than fifteen minutes—probably not more than ten.

Q. What did I say to you? A. You told me that you understood that Mr. Kerns was in the Library, and to go in there quickly and see him.

Q. Did you start to go to the Library? A. Yes, I did. I went to get a book that I wanted to return, and by the time I got to the door of the lobby you informed me that Mr. Kerns had returned.

Q. Now, did you, subsequent to his return from that Library, go and see him again, and see if any change had been made? A. Yes, I went to see him, and I says, "Don't you fall—there may be other members here that may fall"—we thought it might be possible that some others would fall—we thought the Republicans would fall, or might fall.

Q. Did you observe any change from this promise that he had made that he would vote with us all day? A. Yes, sir; he told me after that that he would vote for Mr. White.

A MEMBER: Told you when? A. After returning from the Library, in our conversation.

Q. Did you tell any one that? A. I told Mr. Barlow that.

Q. Did you tell Mr. Bretz that? A. I don't remember whether I did or not. Mr. Barlow sits with me, and I went and sat down in my own seat, and concluded that I would have no more to do with it, and I turned to Mr. Barlow and said our case is lost.

MR. CATOR: About fifteen minutes before that he would have voted for our candidate? A. Yes, sir.

Q. Did you see any one speak to him between that time? A. No, sir.

Q. You judge then that nobody did speak to him except what might be said to him in that Library? A. I could not say.

A MEMBER: Where was he when he said he would vote all that day for Mr. Cator? A. In his seat.

Q. And you say in fifteen minutes later he told you he would vote for Mr. White? A. Yes, after he came from the Library.

Q. When? Before or after he told you that he would vote for Mr. Cator all day? A. After.

Q. The last thing he said was that he would vote for Mr. White? A. Yes, sir.

Q. You did not say anything to Mr. Bretz about this? A. I don't remember.

Q. Were you a nominee of the Democratic as well as the People's party? A. Yes, sir.

Q. Did you make any pledges to the Democratic party as to how you would vote for the United States Senatorship? A. Yes, sir.

Q. To whom did you make those pledges? A. To the Democratic Convention; really, to the Democratic committee—to a certain committee.

Q. What was the substance of the pledge that you made? A. The substance of it was that in case there was no hope to elect a Populist, I would vote for a Democrat for United States Senator.

Q. That was the express understanding—that when you lost all hope, and not until then? A. Yes, sir.

Q. Now, Mr. Adams, you are the first man on the roll call of the Assembly, are you not? A. Yes, sir.

Q. Didn't you just state a minute ago that all hope had been abandoned, and that you concluded that your case was lost? A. Yes, sir; I saw Mr. White was going to be elected.

Q. You say that Mr. White was going to be elected? A. Yes, sir.

Q. Didn't you promise Mr. Beck, who was Chairman of the Democratic Convention in which you were nominated, that you would vote for Mr. White, and that you wouldn't bind yourself by any caucus to vote in such a way that you could not extricate yourself at your own will? A. I don't think I promised Mr. Beck anything of that kind. I had a conversation with him, and he says, "You will not caucus with the Democrats, I suppose?" and I told him, "No;" and then he said, "You will not so entangle yourself in any party or party caucus that you cannot carry out your pledge in reference to voting for Mr. White?" and I told him that we would verbally reserve the right to vote for Mr. White when it became apparent that we could not elect a Populist.

Q. You reserved the privilege to vote for any candidate for whom you saw fit, when it became apparent that you could not elect a Populist? A. Yes, sir.

Q. Mr. Kerns, of course, reserved that same right? A. Yes, sir.

Q. You were not to wait for the action of your caucus to get released?

A. Yes, sir; we were bound by the pledge.

Q. Didn't you just now state that you intended to exercise your own judgment? A. Yes, sir; with the agreement that we entered into—that we would dissolve ourselves from that position.

Q. Each man was to be the judge—each man to leave at the same time? A. We would consult together.

Q. Now, did you not promise Mr. Beck and Mr. Ed. White, a brother of the Senator-elect, that you would not bind yourself by any caucus of your party in such a way that you could not vote for Mr. White whenever you saw that a Populist could not be elected? A. No such conversation as that. I promised that I would not entangle myself, as near as I can remember.

Q. Well, your pledge was to vote for Mr. White whenever you could not elect a People's party man? A. Yes, sir.

MR. MATHEWS: I understood you to say that after your last interview with Mr. Kerns on Wednesday, that you reported to Mr. Cator that "Our case is lost?" A. No, sir; I spoke to Mr. Barlow.

Q. You reported that fact to Mr. Barlow, knowing that the cause was lost—how do you justify the fact that you had agreed with the Democracy in such a contingency to vote for their man? A. Mr. Kerns had changed his position so rapidly, and I wanted to see whether he did make the change or not. I felt in my own heart that he would vote for White.

Q. Well, after he settled the cause, you still left your pledge unredeemed to the Democracy. Why didn't you get up then and vote for Mr. White? A. I didn't see that it would do any good.

Q. You could go to your constituents and say that you redeemed your pledge? A. My idea was to vote for him—was to gain his election. I was not under the necessity of voting for him.

Q. After he was elected? A. I would have done so. I would record my vote to-day, if it was to do over again, for Mr. White.

Q. But you knew the case was gone before you voted? A. Well, I thought possibly something might turn up, and I wished to see the ballot through.

Q. Did I understand you to say that you would vote for Mr. White if you had to do it again? A. I would under the circumstances.

Q. If you knew how the vote was to be determined? A. After the vote was taken I would record my name for Mr. White.

Q. Suppose you knew— A. (Interrupting.) Well, that isn't a supposable case.

Q. Suppose you were satisfied in your own mind? A. I could not be satisfied.

Q. You could not be satisfied until Mr. White was elected? A. No, sir.

Q. Did you know this man Chamberlain? A. The first time I ever saw him was here. I am not acquainted with him particularly—I have seen him a few times.

Q. Did he ever tell you anything about offering to sell three or four People's party men to Mr. Gaffey? A. No, sir.

Q. Did he tell you anything about it after he had this conversation with Mr. Gaffey? A. No, sir; he told me nothing about it.

Q. Do you know any of the members of the People's party who have a \$4,500 mortgage on their place? A. No, sir.

Q. Anybody with a \$3,000 mortgage on their place? A. No, sir; I have none.

Q. Do you know any members of the People's party who have any mortgage on their place? A. I do, myself; I have \$1,500, but it is not to be redeemed in that way, I want it understood.

Q. Of course not. Did you have a conversation—did you not, previous to your negotiation with Mr. Beck in the Democratic Convention, for the purpose of securing his advocacy, promise that you would not bind yourself in any way so that you could not vote for Mr. White? A. I don't remember of doing so.

Q. Did you have a conversation with Mr. Beck last night? A. I did.

Q. Do you remember of telling Mr. Beck that there was not a particle of evidence of any money being used, in your mind? A. It has not seemed so.

Q. Do you remember telling him that you considered the action of Mr. Bretz infamous? A. I don't remember saying that.

Q. What did you say? A. I don't remember hardly what I did say.

Q. You denounced the action as entirely wrong? A. I thought it was injudicious—something to that effect.

Q. You think that was the strongest language you used? A. I think so.

MR. CATOR: Was it the understanding with all of those seven that before this obligation would be broken by any of them, that they must appeal to the body at large in regular caucus? A. That was our understanding.

Q. And that you were to have a meeting? A. Yes, sir.

Q. Did you ever hear, or was it not the understanding of every single man—every member of the People's party as you understood it—that that obligation there taken—was it not always understood that it would be a violation of the agreement for any man to violate it before he had given one vote to their candidate in joint ballot? A. It was so understood.

Q. Always? A. Yes, sir.

MR. MATHEWS: What was the reason in your mind that it seemed necessary for the People's party to bind themselves by a written agreement? A. I don't know, except for concerted action.

Q. Were you suspicious of one another? A. No, sir.

Q. Well, the Democrats and Republicans had no such agreement, as I understand it? A. I had no suspicion of anybody.

Q. Well, this is an unusual proceeding on the part of a party, at least I would consider it so, to proceed and bind one's self in writing as well as in caucus, and that is the reason I asked the question. What was the object in getting this additional binding? A. I will answer the question for myself.

Q. As far as I know the Democrats had no such obligations, nor the Republicans, I imagine, from the way they are scattered here. A. I did not write it. It was introduced as a resolution in our last meeting, and I saw nothing wrong about it, when we made our verbal arrangement.

Q. Do you know who wrote the pledge? A. I do not, sir.

Q. That last business that you saw last Wednesday night—do you know who prepared that? A. I think Mr. Cator first drew out a series of resolutions, but we changed them and cut them down as we thought best.

TESTIMONY OF THOMAS BECK.

Sworn:

A MEMBER: Where do you reside? A. In Watsonville, Santa Cruz County.

Q. How long have you resided there? A. It is about forty years ago since I went to Santa Cruz County—in 1852—and resided there ever since, off and on, only when I was holding public office.

Q. What public offices have you held? A. State Senator, Secretary of State, and United States Appraiser under Grover Cleveland.

Q. Are you acquainted with Mr. Adams, the gentleman last upon the stand? A. Yes, sir.

Q. Were you Chairman of the Democratic Convention of Santa Cruz County—what Assembly district is that? A. Santa Cruz.

Q. What is the number of the Assembly district? A. I cannot tell.

Q. Were you Chairman of the convention that nominated Mr. Adams for the Assembly—Democratic Convention. A. Yes, sir.

Q. Previous to going into that convention where he was nominated, I will ask you if you had any conversation with him in relation to how he should vote in relation to the United States Senatorship in case of his election? A. I had a conversation with him before the convention convened.

Q. Was anybody else present? A. Yes, sir; a gentleman by the name of Hawkins.

Q. Do you remember the substance of that conversation? A. Yes, sir.

Q. Please state it. A. Mr. Adams—we held the convention at a place called Soquel, and Mr. Adams came down and he was very anxious to get our nomination, and in this conversation that he had with this gentleman and myself, stated that he had left the Republican party for good—he was originally a Republican—on account of their action. They were a corporation party, and he had left them for good and forever, and he would act with the Democrats in all things, and when it came to the question of United States Senator, that he would vote with the Democrats. Mr. White's name was not mentioned at the time—the proposition was that he should vote for a Democrat, and he expressed himself at that time that there would be no chance for a Populist. After his election, in order to confirm the matter, Mr. White and myself had a conversation with him.

Q. Mr. Stephen M. White? A. No, sir; Mr. Ed. White; and we went there—but, however, I should state that in the convention his nomination was very bitterly opposed by a great many Democrats who wanted a straight-out Democrat—they thought that they would be violating the principles of the party, and they didn't consider him a Democrat, so they wanted a straight out-and-out Democrat to vote for; and I told them that I thought it was not violating the principles, because he assured me that he would vote for a Democrat for United States Senator, and that in all parts of the United States that the

Democrats and Populists were coming together in order to beat the Republicans. And I asked them, "What do you expect more than that, when he tells us that he will vote for a Democrat for United States Senator, and Mr. Adams has assured us that he will do that." And with this statement to the convention, there was a motion made to appoint a committee with Mr. Adams, and I appointed the committee to confer and on it I appointed Mr. Ed. White as one of that committee, and Mr. Ed. White came before the committee, and said his conference with Mr. Adams and the conversation had been perfectly satisfactory, and Mr. Adams came on the stand, and he modified his statement a little to what he had stated to us in the first place. He said that in no event would he vote for a Republican; as between a Republican and a Democrat, he would vote for the Democrat. Since my arrival in Sacramento I had another conversation with him, and asked him to state to me what we might expect from him—after this conference at Santa Cruz where he said to Mr. White that if he would go into a caucus, that he would go in with the distinct understanding that he could withdraw at any time.

Q. (Interrupting.) When did this occur? A. When Mr. White and myself met him in Santa Cruz, he said there that if he went into a caucus, that he would go in with the distinct understanding that he could withdraw at any time, and then Mr. White said, "When you withdraw, will you vote for Mr. White?" and he said "Yes." Now, then, when I arrived here I had a conversation in the Assembly Chamber. I took him out, and I said, "What can we expect?" He says, "You will be satisfied with the result." I said, "From what you told us, we are entitled to know what you will do." Well, he says, we have gone into a caucus, and I am bound by that pledge which I have taken. Well, I says, "Didn't you pledge yourself to the Democracy, that you would not go in and bind yourself up." Tell me something so that I can go and see my friends and repeat to them what you say. Tell me what you intend to do; we are entitled to know that much from you. He says, "I cannot tell you exactly how long I shall remain in caucus." I says, "You owe it to yourself to tell us." I says, "Is it to yourself or to the caucus that you must look when you desire to withdraw," and he said it was with the caucus. And then he told me afterwards that he was not bound by the caucus, but that action was the result of their own judgment. But, he said, "Mr. Beck, if I told you this—if I should vote for Mr. White, on the first ballot—it would go forth to the world that I had been bribed; and I said, "No, it would not, for we all expect you to do that." They are throwing it up to us now in Santa Cruz County the way you are acting and laughing at us about it.

Q. Did he acknowledge to you in that conversation that he made this promise to you? A. He never denied that, and last night I said to him—last night, "You placed yourself in a very much worse position than Mr. Kerns, for you told us you would not go into any caucus that would bind you up so that you could not vote for Mr. White, and you have done so. And you also stated that you could leave that caucus at any time you wished." "Now," I says, "Mr. Kerns is in a very much better light than you are. You heard all the evidence in relation to using money, and don't you consider that there was not one particle of evidence to sustain that charge which was made?" And he says, "Yes."

And I says, "Don't you consider that the charge made by Mr. Bretz was an infamous one?" and he says, "Yes, it was."

MR. CATOR: I understood you to say that when he came before the Convention that he said as between a Democrat and Republican that he would vote for a Democrat? A. Yes, sir.

Q. And that was a little different from what he talked with you in private before that? A. Yes, sir.

Q. Now, as a Democrat, and a party man, don't you consider a pledge that he had made before the open Convention ought to be more binding than a private statement to any one? A. When I got on that platform, and stated his position, he was present and heard me make that statement, and he didn't deny it when he got on the stand himself, but merely modified it.

Q. Well, he told you in private conversation that he would vote for the Democrat when he could not elect a Populist? A. And he said at the same time that he did not think that there was any chance to elect a Populist.

Q. But he would have voted for one if he thought there was a chance to elect him? A. Certainly.

Q. Do you think that where there are eight members of the Populist party in the Legislature, and they have nominated a candidate for the United States Senatorship, that this agreement which has been testified to here, in any way made it binding on those parties to go back on their own candidate, before they had voted once for him, knowing that Mr. White could be elected finally—do you consider that because a man says he will vote for a Democrat—a People's party man—that he cannot even give one vote to his own candidate, but that he is bound to vote for a Democrat on the first ballot? A. I said that Mr. Adams told us that he wouldn't bind himself in any caucus.

Q. I asked you if you thought that under the pledge that a man gives when he says that he will vote for a Democrat, when he cannot elect a Populist—do you consider that that binds him to vote for a Democrat on the first ballot? A. No, sir.

Q. You know that this balloting must continue right on until some one is elected? A. Yes, sir.

Q. Did you ever demand of Mr. Adams that he should vote for Mr. White on the first ballot? A. No, sir.

MR. CATOR: That is all.

TESTIMONY OF H. J. T. JACOBSEN.

Sworn.

MR. MATHEWS: Are you correctly reported in the San Francisco "Examiner" of the 19th inst., in these words: "There has been corruption, he said this evening, and we want an investigation. Why, they have been offering the Populists the earth to break their pledges and vote for Mr. White. I know what I am talking about, because I was offered everything, from a \$300-a-month position to a foreign consulate, to vote for Mr. White." A. Not exactly; but, in substance, yes.

Q. Will you please state to the committee who made such offers? A. When I say "in substance," I mean to say that nobody came and deliberately offered me anything, but the inference has been to that effect. Mr. Mordecai, the representative of Fresno, took me into the

Library a few days ago, and asked me whether I had any aspirations or not, and if there was anything that I wanted. I told him yes; I had ambitions, like all young men. He says: "Well, there is a Senatorial election coming off here, and we would like to see White elected. I have no authority to come and say anything to you, but we would like very much to have your assistance." I told him: Mr. Mordecai, I am not poor enough that I want to sell my vote, and he says: "Don't misunderstand me; I don't want you to do anything of the kind or anything wrong. Now, if you would like to have the Chairmanship of a committee, and I said, "I have no desire to have a Chairmanship or a position," and he said: 'There is lots of places here in this State—there will be lots of places after the inauguration of the President, and it might be difficult to secure something of the kind.' And he asked me what my ambitions were, and I said I would like to get a foreign mission, or something of that kind that is within reason. And then I told him I was very friendly disposed towards Mr. White, and that I would probably vote for him if it was not that we Populists had a candidate, and pledged ourselves to vote for him until our case was hopeless. Later on I said: "I might vote for White myself." "Well," he says, "that is right. Don't misunderstand me. I wouldn't have you do anything wrong, but whatever you think is right; but I wanted to have a little talk with you"—and that is about the substance of it.

Q. Well, that eliminates Mr. Mordecai from the charge here made in this "Examiner"—if he didn't offer you any consulate or any \$300-a-month position—and only referred to the Chairmanship of a committee—he was then confining himself to the position that Mr. Bretz placed himself in, for he was demanding a Chairmanship from the Speaker. Do you say now that this is correctly reported—this statement here—if you repudiate this statement, that ends my curiosity. A. Yes, sir; I repudiate it.

Q. What part of this paragraph is correct? A. I can't recollect it.

Q. I will read it. "There has been corruption, and we want an investigation." A. I have not used those words.

Q. "Why, they have been offering the Populists the earth to break their pledges and vote for Mr. White." A. I think not.

Q. You didn't say that? A. No, sir. I want to state, Mr. Mathews, that I was pretty angry, and might have said something that I would not say under more mature consideration and reflection. If I said so I did not mean it, and I don't mean it.

Q. That is, this entire statement? A. Yes, sir.

Q. Were you aware that you were talking to a reporter at this time? A. No, sir.

Q. Did you make any such statement elsewhere only on this one occasion? Yes, sir; I spoke to Mr. Kahn that evening and made some statement.

Q. That was on a different occasion? A. Yes, sir; it was a different time.

Q. You and Mr. Kahn were alone? A. Yes, sir.

Q. Well, do you now withdraw that statement that you made to Mr. Kahn—do you state that you were not telling Mr. Kahn the truth when you said you were offered \$300 or a consulate? A. Well, I don't know that I was offered it, but I was led to infer that such was the case.

Q. Well, this is a serious matter, and you are a member of the Legislature and in good standing, and we desire to know if any one has made any offer to corrupt you with money, or in any other way, and I want yourself right. A. I can make no other statement than I have made, and I want to retract anything I have said positively, but what I have said here is the truth. On the morning of the election Mr. E. H. Tucker took me in the Library a little before Mr. Kerns was taken in the Library, and he said it would be to my advantage if I would vote for Mr. White, and I told him it was out of the question. "Well," he says, "I didn't know, but I just wanted to know how you stood on this question." And he hinted to me something about patronage, and I told him I would do what I thought was right. Now, Mr. Cannon, at the State House one day, we had a conversation upon this question, and he said that he would like to see Mr. White elected, and he would be able to accomplish something and do some good for California, and besides that he would have something to say about the patronage in Southern California. He simply stated that he would have something to say about it, and he would be kindly disposed to the Populists, and he would help their cause. I have a couple of letters in my desk which I have received the last few days, and which, I think, an offer. A gentleman called at my office before leaving for Sacramento, and said he would be a candidate for United States Marshal, and that he would get it if Mr. White was elected, and he importuned me to vote for Mr. White. I have those two letters up in my desk, one which I received the day of election.

Q. Who wrote them? A. Mr. E. A. Riberdam. He says, "Now, I want you to vote for Mr. White; every one wants him, and you will be doing yourself and me a good service;" and stating that I would not be forgotten. That I considered was an offer. Lots of people have spoken to me, but I shut them off before they got very far on the subject.

Q. Well, nobody came down to the point and made you a direct offer? A. No, sir.

Q. You are reported to have said they did. A. Well, that is wrong, and I want to withdraw it. No man has come to me and said he would give me so much money for my vote.

A MEMBER: Did you read this account in the "Examiner" that Mr. Mathews has read to you? A. Yes, sir.

Q. Why didn't you rise to a question of privilege upon the floor of the House? A. I have been considering the matter, and I had intended to speak about it to-day in the session, but that paper didn't come to me until it was too late; and besides I am young in the ways of the Legislature, and I am a little diffident to get up, but I had intended to rise to a question of privilege.

MR. MATHEWS: That is perfectly satisfactory to me.

MR. CATOR: Mr. Jacobsen, did you sign this agreement? A. I did.

Q. Was it always understood that this agreement was to cover the United States Senatorship? A. Yes. I will state, however, that I did not get to Sacramento until after this agreement had been drawn up. When I got here the pledge had been signed by all but myself, and when I came up there they asked me if I would sign it, and I said that I could see nothing there that conflicted with my intention.

Q. Did you understand that the question of United States Senatorship was one of the reasons why the caucus was entered into? A. I did.

A MEMBER: Mr. Jacobsen, you understood by this pledge that you were to have the right at some time to withdraw from this pledge and vote for Mr. White, or any other person you chose, didn't you? A. No, sir.

Q. You didn't understand that at any time? A. No, sir; except by the action of the caucus—by a majority of the caucus when they decided I had a right to do so.

Q. Suppose the vote had not been settled upon the first ballot there that day, but it was evident to your mind that Mr. Cator could not be elected, and that nobody but Mr. White could be, did you consider that you would have to wait for the caucus? A. I considered that I was in honor bound to go to the caucus and have the majority of the caucus release me from that pledge, and it was understood that we must assemble and agree upon releasing each other on that question, and all other matters—that no man had a right to go and vote otherwise unless he had been allowed to do so by the majority.

MR. SHANAHAN: You signed the pledge the day after the meeting of the People's party caucus? A. Yes, sir.

Q. You didn't know of any verbal agreement that was entered into at that time? A. No, sir.

Q. You were not present? A. No, sir; but I indorsed it.

A MEMBER: Under your construction of that pledge, neither Mr. Kerns nor Mr. Adams—under that pledge they could not keep their pledge— A. (Interrupting.) They had no right to keep their promise to the Democrats, as I understood it.

A MEMBER: You will state positively now that that article in the "Examiner," in which it quotes you as saying you were offered all the way from a \$300-a-month position to a foreign consulate, is totally and absolutely without foundation? A. Well, I would like to have you state how I shall answer that question?

Q. I understood you to say that you did answer the question.

A MEMBER: I want to get a positive statement, without any equivocation. A. I don't know how to answer it—I will answer "No."

Q. It was not without foundation? A. You may judge from what I have said here to-day. No one has come to me and offered me anything. Now, I don't know how to answer that; I submit what has been told to me.

Q. What you have said here to-day is all the evidence that you had to draw that inference from? A. Yes, sir; and I want to retract anything that I stated positively.

A MEMBER: I understood you to say that you had not been offered anything directly by anybody. A. That is right, too.

Q. There was no direct proposal made to you but what was made by people who were not responsible, and those were merely matters of hint; and, as a matter of fact, no one had offered you anything in the way of money or emoluments? A. Yes, sir.

Q. That is the fact, is it? A. Yes, sir.

MR. VANN: Have you met this man Chamberlain? A. I met him here in Sacramento.

Q. Never before? A. No, sir.

Q. You never authorized him to go to the Golden Eagle Hotel and sell your vote? A. No, sir; I never did that; but I will admit that I have about a \$15,000 mortgage on my place.

Q. He never returned to you and told you that he ever done anything of that kind? A. No, sir.

Q. And no one else came to you and told you? A. I never knew anything of it until this morning, when I read it in the "Record-Union."

Q. No other member of the People's party had ever told you that this man was at the Golden Eagle Hotel and made such an offer? A. No, sir.

MR. CATOR: Is it a fact that from the time of the agreement made by the Assemblymen that myself and the Chairman of the State Committee did everything in our power to hold them together? A. Yes, sir.

MR. CATOR: That is all.

TESTIMONY OF A. G. BENNETT.

Sworn.

MR. CATOR: Did you learn on yesterday, the 18th of January, shortly before the house was called to order, that there was an agreement by which Mr. Kerns was to vote for me? A. On the first ballot, yes, sir.

Q. Did you hear afterwards what Mr. Adams said about any change? A. No, sir. I had no conversation with anybody on the subject.

MR. KERNS: I would like to ask Mr. Bennett if he understood the conversation in the State House—if he understood from that that I was to vote for Mr. Cator—the public conversation in which there was half a dozen took part? A. No, sir; not positively.

Q. Well, didn't you understand from that conversation that I was not going to vote for him—Cator? A. No, not from your talk.

Q. What was the cause of all the talk there? A. Well, it was to persuade you to continue to vote for Mr. Cator.

Q. Well, had I not told you that I did not intend to stand in and vote for Mr. Cator—didn't I tell you that the day before—that I would not vote for Mr. Cator, and that I struck that out of the paper—and talked that way to you, and a half dozen times that I didn't stand any longer in the middle of the road, to vote for Mr. Cator, first, last, and all the time—didn't I tell you that three or four times? A. You told me that Mr. Cator could not be elected, and you did not like this way of standing in the road.

Q. Didn't you understand that I was not going to vote for Mr. Cator? A. No, sir; I don't know—I didn't know how long; whether once, twice, or how long.

Q. Were you present on Monday evening in the session of the People's party headquarters Monday night—last Monday? A. I think so.

Q. The evening before the voting in the Assembly? A. Yes, sir.

Q. Do you remember that Mr. Bretz made a speech, and stated that no People's party man could withdraw from that pledge, and that no People's party man could possibly do anything but vote, first, last, and all the time, for Mr. Cator? A. No, sir; I don't remember that.

Q. Well, do you remember that I said in reply to Mr. Bretz when he made this speech—made it out loud—I said to Mr. Bretz, I could go into that Assembly and conscientiously cast my first vote for Stephen M. White, and I believe that 75 per cent of the people of my district who voted for me would indorse my action—do you remember that? A. I have no recollection of your speaking about being conscientiously able to vote for Mr. White.

Q. I told you that I could conscientiously go into that Assembly and cast my first ballot for Stephen M. White, and that I believed that 75 per cent of the people of my district would indorse my action? A. I didn't understand it that way. I understood you to say frequently, though, that you could conscientiously vote for Mr. White.

A MEMBER: Did you draw up that agreement? A. A part of it—Mr. Cook and myself drew it up.

Q. Did you understand that Mr. Kerns reserved the right when he signed it—reserved the right to vote for whomsoever he pleased for United States Senator? A. I did; on consideration that he should go into caucus, and get released.

Q. At that time, when he was about to sign that agreement, he reserved the senatorial question to himself? A. No, sir; I did not understand it so. The way we talked it over, when any of us chose to change our vote, that we should make it known, and the caucus would consider the matter.

Q. But as to Mr. Kerns, individually; didn't he state that he reserved that right, and would not be bound so far as the United States Senatorship was concerned? A. Well, Mr. Kerns did talk upon the question, this way: He says, "I am willing to stand upon the People's party principles all the time; I am with all of you on all matters; but when it comes to the matter of Senator—United States Senator—when there is no chance to elect our own man, I propose to vote for Mr. White."

Q. That is all I want to know about it.

MR. KERNS: Were you present just after the Committee on Elections had been appointed—that same night; were you present at the People's party headquarters when a resolution was introduced to bind the People's party Assemblymen as to how they should vote on the issue of the election of Assemblymen—that is the contested election—were you present when a resolution was introduced? A. Well, if I understand what you say—

Q. Well, I asked you if there was a resolution introduced pledging the People's party Assemblymen to the effect that they would not vote to unseat a man who had the most votes? A. I was present at the time.

Q. Do you remember that you wanted to put into that resolution "legal votes," and you discussed that proposition—that you wanted to put in "legal votes," and that you discussed it, and then sat down, and you had agreed to leave legal votes out, and I got up and I was in favor of legal votes, and Mr. Bretz said that would not cover the case. That this present contest—the contest that would come before this Legislature—the issue was against this man who had the most votes—that he had not resided in the city or county or district, whatever it was, that he hadn't resided in the district a certain length of time, and that we would have to determine this on the legal proposition—and I would not have anything to do with that, and that is the first time that I became thoroughly disgusted at the meeting when they wanted to take out "legal votes." They wanted me to vote for this man whether he had got there legally or not—whether he had gotten there legally or not.

A MEMBER: You make these statements under oath, of course?

MR. KERNS: Yes, sir.

MR. CATOR: You remember the night you came to San Francisco on your way to the Legislature? A. Yes, sir.

Q. Did Mr. Kerns and you come up together? A. Yes, sir.

Q. What hotel did you go to in San Francisco? A. The Brooklyn Hotel.

Q. Did you try to find me there in San Francisco? A. Yes, sir.

Q. Both you and Mr. Kerns? A. Yes, sir.

Q. Did Mr. Kerns express a desire to see me? A. I don't know. We spoke about seeing you a number of times.

Q. Mr. Kerns was there, and Mr. Kerns and you both came up to my house? A. Yes, sir.

Q. And found me not home? A. Yes, sir.

Q. Was my wife at home? A. Yes, sir.

Q. And had a conversation with her? A. Yes, sir.

Q. On the question of United States Senatorship—was that spoken of? A. In this way—I asked Mrs. Cator what the chances of your election were, during the conversation, and she said she thought very good, if the Populists stood together—something like that.

Q. Did she say anything about the fact that we never placed any credence in the rumor that they would not? A. Well, I have some recollection of something of that kind, but I cannot say positively.

Q. Was there anything said by her to the effect that you might find me down at the Grand Hotel, and that Mr. White had his headquarters there too, and in connection with that, didn't you state that you didn't care about going down there, and Mr. Kerns said, "I would just as soon meet Mr. White—I ain't under any obligations to him." Wasn't that said in substance? A. Well, something of that kind. We mentioned the Grand Hotel, I know.

Q. Did Kerns state in that connection that while he was a friend of Mr. White, that he was under no political obligation to him? A. That is, I understood it.

Q. And he said there that he came to see me? A. Yes, sir.

Q. At my house? A. Yes, sir.

Q. Was there any conversation between you and Barlow there in the Brooklyn Hotel. A. Yes, sir; I had a conversation with Mr. Barlow.

MR. MATHEWS: How did that question of contested election come about—how did that come up in your discussions? A. I don't know.

Q. Was the purpose to get together—have the Populists get together and discuss this matter for their own assistance? A. No, sir; I understood that we wanted to know how we should vote intelligently if there was a contested election brought up, and for that reason some one drew up this paper.

Q. Was it considered by that caucus that keeping a man in his seat irrespective of all circumstances surrounding his election, right or wrong, a part of the principles of the People's party? A. No, sir. We only agreed that the basis of a man's right to take his seat should be the votes cast for him, and I said I should rather have it "legal votes," and we would have to maintain it was legal.

Q. And your caucus determined to act in the matter of contested elections without any reference to be guided by the testimony of the Election Committee—the testimony taken by the Election Committee? A. No, sir; we agreed we should not be thrown out upon technicalities, and the way I put it—they asked the question of what technicalities meant—I should not have subscribed to anything that would bind me to vote against a man who has been seated fairly. It was only when

unjust measures were to be instituted; we wanted to be just, and to cast our votes according to the majority of the votes cast for the contestant if he had the greatest number of votes.

Q. What is the object of binding a man—wouldn't he rather interpret the evidence for himself—wouldn't he? A. This was to have a mutual understanding.

Q. Was it a proposition that the majority of the caucus should determine? A. Yes, on that proposition.

MR. VANN: There never was an agreement with the People's party men how they should vote? A. No, sir.

Q. There never was such an agreement as that entered into? A. No, sir; it was talked over.

Q. The way that came up, is it not a fact that a man by the name of Miller—I believe from Alameda County—we were discussing his case in a general way—it was his particular case we were discussing—I don't remember how it came up, but was not this the point, that we finally arrived at, or the gist of the conversation went this way; that if this man had received the majority of the votes of his precinct or district, and had the certificate of election, and on the account of a mere technicality—not having lived in the district perhaps ten or twelve days, or a week, or say as the law reads, within the required time, that we did not consider it right to unseat him on a mere technicality? A. Yes, sir; I expressed myself that as far as I was concerned I did not think I was going to decide what the Courts ought to decide. We wouldn't stand on any such technicality.

Q. That was the only contested election case that ever arose in the caucus? A. I think so. I was not present when any other came up, at least.

Q. Or any other man's name—any other contested seat was mentioned? A. Yes, sir.

Q. And there never was any agreement entered into by the People's party members in case a contested election case should come up, with respect to it? A. No, sir.

Q. Isn't it a fact that we talked as in a general conversation as men would naturally in a room—socially? A. I think so.

Q. Notwithstanding there are some talk—was there not a resolution offered, but the resolution was not acted on? A. I think not.

Q. The resolution was not acted on, but was offered by some one? A. I don't know whether it was acted on or not, for certain.

MR. MATHEWS: Well, a debate followed when that resolution was offered, and the words "legal votes" were in it, or were to be put in it? A. Yes, the question was to be whether the number of votes cast should be "legal votes," and we should be bound by that. Some we thought we should, and others thought it was not necessary—that all votes were legal any way.

Q. And was the majority in favor of inserting "legal votes?" A. I could not say.

Q. And that amendment, if it were an amendment, is what split the caucus, and consequently no definite action was taken? A. I know Mr. Kerns and myself maintained that we thought it should be "legal votes."

MR. CATOR: This question of unseating Mr. Miller came up there? A. Well, I heard that matter talked about, but only very little.

Q. The opinion there expressed that in a case of that kind that we would not declare the votes illegal simply because he had not lived long enough in a place? A. This was the way it was in the conversation, that if the contestant coming from a place where he had his certificate of election from, and the majority of the votes, it was not our place to determine against the voters of that precinct.

[Recess was here taken until 1:30 P. M.]

TESTIMONY OF M. THOMAS, JR.

Sworn.

MR. CATOR: Mr. Thomas, where do you live? A. Gilroy.

Q. A member of the People's party? A. Yes, sir.

Q. Nominated by the People's party? A. Yes, sir.

Q. And indorsed by the Democrats? A. Yes, sir.

Q. Didn't consider that would change you any? A. No, sir.

Q. People's party all the time? A. Yes, sir; and a full blooded one at that.

Q. Do you know Mr. Kerns? A. Yes, sir.

Q. Met him here for the first time? A. Yes, sir.

Q. And was present when this agreement was signed? A. Yes, sir.

Q. And did you hear any statements or reservations that it didn't apply to the United States Senatorship? A. No, sir.

Q. What did you understand about the right of anybody to be released from it without going before the caucus? A. Well, I understood that members didn't have a right to be relieved without going and consulting with the majority—the caucus.

Q. Did Mr. Kerns ever go there and ask to be relieved? A. Not that I am aware of.

Q. Did you understand on the morning of the 18th of January from the conversation of Mr. Adams that Mr. Kerns had agreed to stand solid with us on that day? A. No, sir; I never heard of it.

MR. CATOR: That is all.

MR. SHANAHAN: Any questions, gentlemen of the committee?

MR. VANN: You met this man Chamberlain, have you? A. Yes, sir.

Q. Did you ever meet him before you met him here in Sacramento? A. No, sir.

Q. Never heard anything of him? A. No, sir.

Q. Was you aware that he visited a man by the name of Gaffey in the Golden Eagle Hotel some days ago, and there offered to sell four People's party votes? A. No, sir.

Q. No one ever told you that he did that? A. No, sir.

Q. You never authorized him to do it? A. No, sir.

Q. You have never been approached in any way and offered any money? A. Not money.

Q. Was you offered anything? A. Well, I had a little conversation with a Democrat here in Sacramento, and I will state it to the committee.

MR. SHANAHAN (interrupting): State it.

THE WITNESS: At that time it was agreed with this individual—

Q. (Interrupting.) Who was the individual? A. Well, I will tell you after a minute. It was agreed with this individual that it should remain a secret—there should be nothing said about it. Now, since you press it, I will mention the man's name.

Q. What was his name? A. It was Adam Herold, the ex-State Treasurer. He approached me here at the Capitol just after recess, and we walked together down to this railroad track here, this street car track, and before we parted he asked, "How do you stand on the senatorial matter?" and I said, "I am solid for Thomas V. Cator." "Now," he says, "in case Stephen M. White is elected I want the superintendency of the Mint at San Francisco, and, of course, you knowing how I am fixed in Gilroy," he says, "I don't suppose you will want any situation; but in that office, you know, there will be about two hundred places, and if you have any friends, why then I would remember them." That is the extent of that conversation.

MR. MATHEWS: Did he offer you a place on condition you would vote for Mr. White? A. Not me. He said: "I don't suppose it would make any difference with you, but your friends would be remembered."

Q. Did he say he had any authority to make that offer from anybody, or was it to promote his own canvass? A. I didn't ask him where he got the authority.

Q. He was going to get a place that he would have control of himself, and not a place in the gift of the Senator-elect? A. Yes, sir. He said that if Stephen M. White was elected United States Senator that he stood a good chance to be Superintendent of the Mint in San Francisco, and that there would be about two or three hundred places, and my friends would be remembered.

MR. MATHEWS: That is all.

MR. SHANAHAN: Did he say to you that Mr. White authorized any such statement? A. No, sir. He didn't say anything about that.

MR. CATOR: Wasn't it constantly believed and expressed in the caucus down even to the very last moment that there might be a possibility to elect our candidate if they stood solid together—the members of the People's party? A. Yes, sir.

THE WITNESS: Now, gentlemen, when you get through, I would like to make a little statement that I think perhaps I know something of and that you don't know, and you would not know how to go about getting it, and I don't think it would be doing justice to all unless I tell some of the conversation.

MR. MATHEWS: Tell everything you know.

THE WITNESS: Sunday morning, prior to the ballot being taken, Mr. Peddler, Mr. Cannon, and myself were in conversation in front of the State House Hotel.

Q. In this city? A. Yes, sir. And just as we were passing the entrance to that hotel Mr. Cannon came out onto the sidewalk and Mr. Peddler said, "Hello, Brother Cannon, haven't you got enough of this pie yet?" and Mr. Cannon said, "I am going to take the cake home with me," and we talked for a few minutes about other things, and we went down to the People's party headquarters, and then the evening prior to the election, January 17th, Mr. Brooks and I were in conversation in the Golden Eagle Hotel. I had an uncle, W. F. Thomas, who was registered there. Mr. Cannon had a seat there and Mr. Brooks and I were discussing the senatorial question. Mr. Cannon took a hand and

said he thought the senatorial question would be decided very shortly. I said, "Mr. Cannon, can you count on all the Democratic votes standing firm?" and he said, "Mr. Thomas, my belief is that the senatorial question will be settled on the first ballot." "Well," I says, "I beg to differ with you, I don't think it will be," and that was all of importance that was said there.

MR. SHANAHAN: That was on the night before the day of the joint ballot? A. Yes, sir. I would like also to state that I received a letter from O. P. Welhorn of Santa Clara—I don't know what relation he bears to the Democratic party—stating that Mr. White would be elected without my vote.

MR. CATOR: So you agreed with him that he would be elected without your vote? A. Yes, sir.

MR. KERNS: I would like to ask a question.

MR. SHANAHAN: Go ahead.

MR. KERNS: Were you present at the time that this resolution that we all signed—were you present when it was introduced and discussed? A. The agreement that we should all remain solid?

Q. Yes, sir. A. Yes, sir.

Q. Did you remember that anybody stated anything in regard to anybody reserving any right on the senatorial question that night—was the matter discussed at all? A. I remember that it was discussed, and you hesitated about two minutes before you signed it. I also remember that you were standing when you signed it.

Q. Talking or not? A. While you signed the paper you were not talking.

Q. Was I standing there? A. You first had a seat near the wall, and then when it came to your time to speak you arose and picked up the pen and hesitated before you signed it.

Q. Did I say anything? A. I think your first words were that there was no need of it.

Q. Do you remember that I said—asked the question if this applied to the question of United States Senator? A. Yes, sir; on all political measures or party measures wherein the political lines should be drawn.

Q. Do you remember that some one said it did not refer to the United States Senatorship? A. No, sir. It was my understanding that it did.

Q. Did any one of the members of that Assembly answer my question when I asked them did it refer to the senatorial question or not—did any one answer my question? A. No, sir; I don't know that you asked the question.

Q. You don't know what I did say? A. No, sir; I don't know, but I know what conclusion I drew from the talk, that it was an agreement.

MR. SHANAHAN: From his conversation? A. Yes, sir; and from others' too. And that is why he hesitated—was to determine whether that would in any way tangle him up or involve him. And after this two minutes' deliberation he concluded that it was a proper thing to do. I also remember other conversations that we had, that when the time came that there was no possibility of electing our candidate, and the resolution should be dissolved, and each one was left to vote as he saw fit.

Q. Do you remember that I said on that occasion that—as it did not refer to the election of United States Senator—that I would sign it?

And I also said, "Gentlemen, if I see anything here that I do not think is right or conflicts with me or my interests or the interests of my constituency, that I will step down and out of this place?" A. No, sir; I do not.

Q. You did not hear me say that I would step down and out? A. No, sir.

MR. SHANAHAN: Heard nothing of that kind? A. No, sir. After all the talk and discussion—and he signed it—that was conclusive evidence to me.

Q. Did you hear him make any remark in substance the same as he has stated here just now? A. No, sir.

Q. You don't remember? A. No, sir; I do not. I believe that it has been stated here that he was present when we made our nominations; that is a mistake; he was not present. It was reported that he was sick.

MR. KERNS: Do you know whether I had any knowledge of that fact? A. No; but some one in the room said you would not be there, that you were not feeling well.

Q. You don't know whether I had any knowledge of your being there or not, or meeting being held? A. No, sir; I do not.

TESTIMONY OF CHARLES A. BARLOW.

Sworn.

MR. SHANAHAN (to Mr. Thomas): Mr. Thomas, I will ask you a question. Can you remember what Mr. Kerns did say on that evening, or anything that he did say with reference to signing these resolutions? A. In reference to these resolutions?

Q. In regard to the election of United States Senator? A. No; I don't remember anything that he said. I don't remember anything that he offered as an argument why he did not sign them.

Q. Do you remember what he did say? A. No; I do know that he entered into the discussion with the rest of us. Some times two were talking, and some times three, and that he finally took the pen and signed them.

Q. But you cannot remember any statement actually made by him at the time? A. No, sir.

Q. He did make some statement, did he, or not? A. Well, as I say, he discussed it with all of us. If you want to know through me what his objection was for hesitating in signing it, I cannot tell you that.

Q. I am just trying to get at what he said—whether it was an objection to the agreement, or what it was. A. Well, I could not tell you about that.

Q. Can you tell in substance? A. No, sir; any more than he hesitated before he signed them; hesitated about two minutes.

MR. SHANAHAN: That is all.

MR. CATOR (to Mr. Barlow): Mr. Barlow, where do you reside. A. San Luis Obispo County.

Q. A nominee of the People's party for the Assembly last election? A. Yes, sir.

Q. Without any indorsement of any party? A. Thank God.

Q. Were you present when this paper was signed—resolution?
A. Yes, sir.

Q. Did you meet Mr. Kerns here? A. Yes, sir.

Q. In Sacramento? A. Yes, sir.

Q. Was he present? A. Yes, sir.

Q. Did you hear anything said there in that room about this resolution—that it did not cover the question? A. No, sir.

Q. By anybody? A. I can tell just exactly the statement that seems to be wanted here: Mr. Kerns said that Thomas V. Cator was his first choice, and after him Mr. White.

Q. You were in the Legislature on the 18th of January in the morning about 11 o'clock. A. Yes, sir.

Q. Did you see Mr. Adams in earnest conversation with Mr. Kerns at that time? A. Yes, sir.

Q. Did Mr. Adams come right across to you and say that Kerns had agreed to stand solid all that day? A. Yes, sir; the day of the joint ballot, whatever day that was.

Q. Communicating that to you? A. Yes, sir.

Q. After Mr. Kerns had been reported to go in the Library? A. Yes, sir.

Q. What occurred with him? A. I plead with him, as a personal favor, as I was going to second the nomination of Mr. Cator, that he would at least cast one vote for me, and I said I would never make any further plea with you on the matter, and he said, "Barlow, you are talking to me real nice, and your demand is no more than just, but it is too late."

Q. That is what he said to you? A. He may not have used that exact language.

Q. And this was how long after the conversation with Adams? A. Adams went right over to him and said that he thought he wouldn't stand, and then I went over and made this plea.

Q. He said it was too late? A. Yes, sir. He said my argument in favor of casting one vote was no more than right.

MR. CATOR: That is all.

MR. MATHEWS: What did Mr. Adams say to you about Mr. Kerns' position just previous to balloting? Did he state that the hopes of the People's party were blasted; that the cause was lost? A. After he came back a second time? Yes, sir.

Q. He told you that there was no longer any hope to elect a People's party man? A. He said he didn't think that Kerns would stand with us that day.

Q. He testified that? A. Well, perhaps he used that language.

Q. Well, I want to get it confirmed by your statement. A. He may have used that language.

Q. Do you know Mr. Chamberlain? A. Yes, sir.

Q. How long have you known him? A. I have just met him since I have been in Sacramento.

Q. Did you know of this transaction with Mr. Gaffey? A. No, sir.

Q. Have you any knowledge of any corrupt propositions having been made to any member of the Legislature to influence him in casting his vote in the Legislature? A. Not that I know of.

MR. VANN: Do you remember you and I having a conversation soon after we came to Sacramento—it was either the first day or the second,

one or the other of those days I am pretty sure it was—and in that conversation we talked generally of the report that was circulated throughout the papers of the State in regard to Mr. Bennett and Mr. Kerns, and perhaps Mr. Adams and myself—that we would vote for a Democrat for United States Senator, and that the Democrats claimed three out of four, and so printed in a card sent out by the State Janitor—I think it was three they claimed, or two, anyway—they claimed they would have those votes, and you and I had a conversation, and we arrived at a conclusion by which we would find out whether those men owed their allegiance to the Democratic or the People's party, and we concluded that we would draft a resolution and find out whether they would not sign a resolution to that effect? A. Yes, sir.

Q. And is not that why this resolution was drawn up? A. Yes, sir.

Q. To find out whether there was a man among these members of the People's party who was not solid? A. Yes, sir.

Q. And you and I talked about it first? A. Yes, sir.

Q. That is, I talked to you about the thing before I talked to any one else? A. Yes, sir.

MR. VANN: That is all.

MR. SHANAHAN: Whom was that originally suggested by? A. The first I heard of it was from Mr. Vann.

Q. Do you know whether it emanated from Mr. Cator or not? A. I can't say whether it did or not.

MR. CATOR: I can answer that it did not. What is more, I never asked Mr. Kerns how he was going to vote, or any other member of the People's party.

THE WITNESS: That agreement was drawn up with the intent of finding out how many People's party votes we had in this Legislature, and any man who signed that resolution pledged himself to the People's party without any reservation.

MR. CATOR: Did Mr. Kerns ever say to you that he was not a People's party man? A. Never. He don't need to know.

Q. He came to the Brooklyn Hotel in San Francisco, didn't he, when you were there, the night before you came up to Sacramento? A. I believe he did.

MR. KERNS: Do you know that I came to the Brooklyn Hotel? A. I believe you left your card there for me. I don't remember whether I saw you there or not. I cannot really say.

Q. I didn't see you there at all events. I came there at your request.

Q. You left a card there for me? A. Yes, sir; I left a card there.

Q. Do you remember the morning of the 18th when I came into the Assembly Chamber? A. Yes, sir.

Q. Do you know whether I went out once or twice before the vote was taken for United States Senator? A. I could not say how many times.

Q. Did you see me go out at all? A. I saw you once.

Q. You didn't see me twice? A. No, sir.

Q. In that conversation that we had at the desk—you came to my desk—you say I thought it was just and right—didn't I say to you that I considered you came in a friendly spirit and that I appreciated your talk, but that talk that I had with Mr. Bretz—I had no respect for him? A. Yes, sir; you said something of that kind.

Q. I said it was in a friendly spirit? A. You said to me that you thought my demands were just, as I was going to second him, in the first real test vote. I just merely asked you that you vote for him once this day. Wasn't that what I asked?

Q. Yes, you asked that, and I said "No, I cannot agree to that. I have made up my mind." A. You didn't say that it was too late now.

Q. I might have said that it was too late. Mr. Bretz's talk turned me completely over.

MR. CATOR (to Mr. Kerns:) Q. Do you mean to say that you thought of going to vote with your party, and you went back on account of what one man said to you?

MR. KERNS: Because I considered Mr. Bretz the leader in the party, because he introduced the second resolution that I did not indorse, and I thought he was the leader of that, and the remarks he made to me.

MR. CATOR: Did you hear Mr. Adams' testimony this morning?

MR. KERNS: Yes, sir.

Q. Have you the same to say now as you did last night—that it is false? A. I won't say that in regard to the ten days' proposition was false, because he might have misunderstood me, but I do positively say that it is false, because I never made the assertion. I won't say that Mr. Adams lied, because he might have misunderstood me.

Q. What talk has there been between you and Marion Cannon about patronage? A. No talk.

Q. Hasn't there been some conversation between you and him that if Stephen M. White was elected he could get patronage easier? A. Yes; that is, he would have better standing in Congress if he was elected; he said that.

Q. Where were those conversations about patronage? A. They were not private and not secret. Mr. Cannon talked loud all the time.

Q. What particular offices did he mention that he thought he might get? A. No particular office—no particular offices—but he said he would have a greater influence.

Q. And by a greater influence, he meant a greater influence with Cleveland? A. No; in Congress.

Q. You didn't understand that his influence would be greater because one man was Senator rather than another? A. No, sir.

Q. Now, isn't the influence that was meant—influence to get patronage? A. No, sir. That might be said, but I didn't ask him about it.

Q. Now, think a little. Wasn't there specific offices mentioned that he thought he would get? A. No sir; never at any time, about any office at any time, or any place, or for any man.

Q. Didn't he say that he thought you could get offices for your people if White was elected? A. Well, he said he thought if the People's party would go over in a body that Mr. White would have something to say after that—

Q. (Interrupting.) Didn't he say to you, if you individually wouldn't vote for White, that his influence would be practically lost with White? A. No, sir.

Q. Mr. Kerns, I want to come down a little closer to the conversation when Cannon came to you and spoke about Goucher. Do you know Goucher when you see him? A. No, sir.

Q. You don't know that it was him that was lead into the Assembly Chamber.

Q. And you didn't know before Goucher voted that he was in the Assembly? A. Yes, sir; because I was in the Assembly on the roll call.

Q. On what roll call? A. I don't know what roll call. It was at that time I heard Mr. Goucher's name mentioned.

Q. Did you notice whether it was answered to or not? A. I think it was responded to. It was on the roll call to vote I suppose—I don't know.

Q. Did you hear his name answered to for anything before he voted for United States Senator? A. I don't remember whether I did or not.

Q. Now, you say that Marion Cannon told you that Goucher wouldn't be there that day, and told you not to be bulldozed by these fellows any more? A. Yes, sir.

Q. By bulldozing you meant don't be pressed or bulldozed into voting for the Populist candidate? A. The way I was talked to at the State House.

Q. He didn't ask you to vote for me? A. No, sir.

Q. He didn't suggest it. A. No, sir; he said he had been told that Goucher would not be there.

Q. Would not be there? A. I didn't pay much attention to it when he said Goucher wouldn't be there. I said that is all right.

Q. Now, isn't it a fact that when Marion Cannon came to you and said that Goucher would not be there, that he in substance said, "Now, you have got to vote for White?" A. I took it just the other way, that if Mr. Goucher was not there, there would be no election.

Q. Is it a fact that your going into the Library and meeting Gaffey changed your mind, and turned your voting? A. No, sir.

Q. Didn't the fact that he said to you that Goucher was absent, and things that transpired immediately thereafter—wasn't that the reason for your changing from the position you had taken and from the statement that you had made to Mr. Adams? A. No, sir; had nothing to do with me—nothing to do with my change.

Q. Did you take your hat with you when you went out? A. I don't know—I think I did, though.

Q. Are you sure that you did not go out of that room bare-headed? A. I went out twice. I don't know whether I went out bare-headed or not.

Q. What did you put your hat on for? A. I don't know that I had my hat on.

Q. You stated you went to see Stephen M. White? A. Yes, sir.

Q. Where did you go to find him? A. I started to find General Mathews, because I knew that General Mathews would be in the hall and ready to vote for United States Senator.

Q. You didn't see Mr. White again before the final ballot was cast? A. I didn't go and see Mr. White. I asked Mr. Montgomery, of Santa Ana, where Mr. Mathews was—I got a letter from Mr. Dillon, and I wanted to show that letter to Mr. White.

Q. Why couldn't you just as well have voted for Mr. White on the second ballot, if you felt so absolutely desirous of electing him, and carrying out your agreement with your own party? A. I did.

Q. On the second ballot in Joint Assembly, I mean? A. I suppose I could if I had not arrived at a different conclusion.

Q. Is it a fact that something occurred to determine you—that you must vote that way? A. No, sir; that was determined at the State House. I thought that the People's party were fully convinced of it.

Q. Well, they say they were all in doubt. Do you say that Mr. Adams is absolutely false—that his testimony is false when he testifies that you promised him that you would stand and vote all day for the People's party candidate? A. You heard what I said on that subject.

Q. Is that testimony false? A. I don't care to repeat it.

Q. Did you have this amendment you were talking about when you met Gaffey, with you? A. Yes, sir; and a letter.

Q. Whereabouts in the Library did you meet? A. He was standing in the door when I saw him.

Q. Do you remember whether you went into one of those little rooms or not? A. I don't know.

Q. Do you know? A. I think—we just went in there, and I handed him the letter, and said, "I won't have time to get your comment, but I want to see General Mathews in regard to that bill," and I said, "You read that, and tell me what you think about it when you read it." When he read it, I asked him what he thought about it, and he said, "Well, I would be guided by what Mr. Dillon said." I was not there thirty seconds. I was afraid they would commence calling the roll before I would get back.

Q. Are you quite sure that you testified to all the conversation—that is, between Cannon and yourself, when he spoke about Goucher not being there? A. I testified to every word last night.

Q. How do you account for the fact that Cannon and you disagree on that point? A. I don't remember whether he said there was an election or not.

Q. That has no reference to this?

TESTIMONY OF MR. BARLOW.

Recalled.

MR. BARLOW: In regard to the question of patronage, the people down in San Luis Obispo have inquired of me to get a part of the patronage—to get the Post Offices—and we arranged through our Executive Committee that the petitions for the various places should come through the Executive Committee and through myself, and they asked me to correspond with Marion Cannon, and I did so, and received a letter from Marion Cannon that his ability to do so would not be decided until after the senatorial election in Sacramento.

MR. SHANAHAN: You made the request of him to state what he could do in that regard on behalf of your people? A. In behalf of the People's party.

Q. Of your county? A. Yes, sir.

Q. You made the first suggestion yourself? A. It came through the people, as they wanted me to write and find out.

TESTIMONY OF S. BACHRACH.

Sworn.

MR. SHANAHAN: State your name. A. S. Bachrach.

Q. Where do you reside? A. Oakland, California.

Q. How long have you resided there? A. Nineteen years.

A MEMBER: You affiliate, I believe, with the Democratic party. A. I do.

Q. Have you at any time in recent years been connected with that party in any official capacity? A. I have for a number of years past been Secretary of the County Committee.

Q. While you were Secretary of that committee did you meet Mr. Bretz? A. I did.

Q. Did Mr. Bretz make any specific promise to you as to his course in the election of a United States Senator? A. Mr. Bretz called at headquarters, and introduced himself to me—I was alone at the time—and the matter of his indorsement by the Democratic County Committee was advanced by him, and it was generally understood that our candidate, who had been nominated, might, under certain contingencies, be withdrawn. Mr. Bretz, seemingly, was very careful in his conversation when I told him that there were serious considerations involved in this withdrawal, and his subsequent indorsement. When Bretz, somewhat closely guarding his actions under contingencies, namely, the election of a United States Senator, said that his choice for United States Senator was Mr. Foote, and that he would support Mr. Foote if he was nominated; upon being pressed a little closer he said that of course he would not support a Republican, but would vote for a Democrat. I asked Mr. Bretz there which political party he had affiliated with; and he said that he could not state accurately what party he was connected with, as he had not voted for probably more than twenty years. That, in substance, was the conversation we had at that time.

Q. Did you have any further conversation with him in regard to his indorsement by the Democratic party—how was that indorsement brought about? A. That indorsement was brought about by the Executive Committee of the County Committee in consideration of the pledges, that Mr. Bretz made, both directly and implied. Mr. Wilde, who had been withdrawn, and Mr. Bretz was subsequently indorsed.

Q. On condition that Mr. Bretz would vote for the Democratic nominee? A. Well, I would like to qualify my remark in that particular, because the conversation that Mr. Bretz had with me would not really be considered as an official declaration of his, because subsequently he made an official declaration in writing, of which I knew nothing until I saw it in the paper to-day. I had heard of the existence of such a document, but had never seen it.

Q. Do you know Mr. Chamberlain? A. What Mr. Chamberlain?

Q. The party that testified here yesterday? A. Yes, I know him.

Q. Have you ever had any dealings with him in any way? A. Never.

Q. Do you know what his reputation is for truth, honesty, or integrity? A. Well, I never heard his character brought into question. I have frequently seen him during his residence in Oakland, but know nothing of him. From my conversations with him I was led to believe, however, he was somewhat visionary, but I never bothered myself about him.

MR. CATOR: Have you got that written document which is printed in the "Examiner" to-day? A. I have.

Q. Well, just produce it.

MR. SHANAHAN: You have not the original? A. No, sir.

MR. CATOR: See if this is what you refer to.

THE WITNESS (after examining slip of paper): I take it for granted it is the same. I have not compared it, but I presume it is the same.

MR. CATOR: I would like to offer this in evidence, if there is no objection.

MR. CATOR (reads as follows):

ALAMEDA, CAL., October 27, 1892.

To the Executive Committee of the Democratic Delegation of the Forty-seventh Assembly District of Alameda, Cal.:

MESSERS: I hereby pledge myself to your delegation that I will, if elected to the Assembly for this district, support the Democratic caucus nominee for the United States Senate in case it is not possible to elect the People's party nominee. This pledge is made and delivered with the understanding that it shall not be made public in no case, except that I fail to keep it. It is also understood and agreed by both parties that it shall remain in possession of the Alameda Democratic Club, and if I am not elected it is to be returned to me immediately after the election, and if I am elected it is to be returned to me as soon as I have voted for the Democratic nominee.

Yours truly,

A. BRETZ.

MR. SHANAHAN: That will go in evidence. It is not, however, the original, and will not interfere with the original if produced here.

THE WITNESS: I desire to say that the so-called pledge—that the indorsement of Mr. Bretz had been brought about prior to the execution of that pledge. Mr. Bretz's name had been placed on the Democratic ticket a long time prior to that, and it was done in pursuance of the promise, as stated before, both direct and implied, that he would support the Democratic nominee for United States Senator.

Q. Your candidate for the Assembly was nominated under a conditional arrangement with him—that he might be withdrawn? A. No, sir. Mr. Wilde previously made the fight, and while it is well known to those who lived there and watched the political complexion of Alameda County that a Democrat could not be elected; Mr. Bretz, in conversation with me, said that he did not think that he could be elected alone by Populist votes, and neither can a Democrat be elected by Democratic votes, but jointly he could be elected.

Q. That district is ordinarily a thousand Republican? A. No, sir; not as much as that.

Q. Don't you think that as far as that pledge there is concerned that Mr. Bretz was at entire liberty to vote for a Populist candidate? A. I am not giving an opinion in that matter. I will not give an opinion in that matter.

Q. Well, you don't claim, absolutely, that voting one time for a Populist candidate, a man would violate his pledge? A. Well, I inferred from Mr. Bretz's pledge that he would vote for a Democrat for United States Senator. The contingency as expressed in that pledge was not foreseen at that time—the time of the conversation I had with Mr. Bretz. The possibility which has arisen was not even remotely suggested at that time, and I took it for granted that Mr. Bretz would vote for the Democrat—for the Democratic nominee for United States Senator, and I based my conclusion not only upon his individual statement to me, but upon his obligation which I considered he would be under

to the Democrats. Mr. Bretz, from his conversation with me, was that he was interested in certain legislation, and it has been his ambition to go to the fountain-head—to the Legislature, and there endeavor to introduce certain measures with the hope that his presence might insure their adoption, and I concluded that as for his vote for United States Senator certainly wouldn't have any bearing upon the adoption of those measures, but he could vote conscientiously for that office.

Q. You inferred that? A. Yes, sir. I knew this, Mr. Cator, that there was political honesty in all parties, and I had more or less experience in politics, and my experience had been that when one had made promises in pursuance of his party obligations he should fulfill them.

Q. Well, that is not always the case? A. Well, evidently not.

Q. You knew that he had been nominated by the Populists? A. Yes, sir.

Q. You knew that party had held a national convention, and that they had nominated a President and Vice-President? A. Yes, sir.

Q. And professed to be a national ticket, with Congressmen, and members of the Legislature, and so on? A. Yes, sir.

Q. You knew that he had formally accepted the nomination from that party? A. I knew that he had formally accepted their nomination.

Q. Did you expect him, then, to so far break his obligation to that national party as to refuse to vote for their candidate if he had thought there was an opportunity to elect him for United States Senator, and not aid in that election? A. As I said before, the contingency which you now speak of had never been suggested, and I was governed solely in my conclusions by his own statement.

MR. MATHEWS: I would like for Mr. Bretz to put some witnesses on the stand to prove his charges.

MR. BRETZ: I have none. I would like to state, furthermore—I would like to ask this committee a question—whether I understood it right, that an offer of patronage, if it should be considered in the nature of a bribe?

MR. SHANAHAN: The committee will attend to that matter afterwards. I will tell you now that any evidence you have to offer, not only as to the use of money, but as to any official station—that your evidence will be permitted to come before this committee if the Chairman has his say about it.

MR. BRETZ: I will state this, that before I came to the Legislature, a prominent member of your party said to me—he said this: "Now, my boy, you go up there and be a little decent with our folks—"

Q. What party is that? A. The Democratic party.

Q. Who was the person? A. Frank Moffitt.

Q. Of the "Oakland Times"? A. Yes, sir. "Be a little decent," he says, "and give our folks a chance."

MR. SHANAHAN: Has that got anything to do with this senatorial fight. Is it connected with it?

MR. MATHEWS: I move that Mr. Bretz be allowed to state his case.

THE WITNESS: The suggestion was that if I would vote for my party a few times, and then come over to the Democrats, the Democrats would send me to Congress. Now, I didn't want to refer to this, but inasmuch as the Democratic party of Alameda County have charged me with breaking my pledge—

MR. MATHEWS (interrupting): Does not that pledge say that whenever you failed to redeem the pledge it shall be made public? A. Yes, sir.

Q. Well, that depends upon how a man looks at it. A. Mr. Thomas Stoddard and Jack Hays were the custodians of this pledge and they wouldn't deliver it to the Secretary of the County Committee, and they guarded it so sacredly that they wouldn't let them have it. Then this very gentleman, Tom Stoddard, said: "Now, Mr. Bretz, we realize you are in a very awkward position. You are between two millstones. Under our pledge you have a right to vote for a Populist as long as you can hold the Populists together, but then you ought to come over on our side." And he says: "Here is the important point. If you will come over and be instrumental in electing a Democrat, there is nothing in the ranks of the Democratic party that you could not get in the future in the way of patronage." "My dear boy," I says, "the patronage will be in the hands of the People's party."

Q. Do you consider it more immoral to make that promise than to exact a similar one? A. Not any more.

Q. You don't consider that any corrupt proposition was made to you by Mr. Moffitt? A. I paid no attention to it.

Q. You considered that Mr. Moffitt made you an improper overture? A. I don't know what the law is on that subject.

Q. How did you take it? A. I took it as taffy from Frank Moffitt.

Q. You didn't think that he intended to bribe you? A. No, sir.

Q. You didn't think he made you an offer? A. Only in that way.

Q. What would you think of a proposition of that kind if Mr. Moffitt had come to you and said, "I am a candidate for, or I will be made the Superintendent of the Mint in San Francisco?" A. I would consider it in the language that Mr. Stephen M. White used to me when I was sent for to go to the Palace Hotel. I went there, and the matter of the People's party came up, and my obligations to the Democratic party, and I said to Mr. White, I said, "Could any respectable man ask me to throw down my own party?" and he said, "No respectable man would ask you to do so—no respectable politician." Now, I consider any man who would offer inducements was not doing right.

Q. I asked you would you think that kind of a proposal right? A. My view of it, it is wrong.

Q. And would be really as bad as offering a man money? A. No, not so bad.

Q. Then it is petty larceny, and not grand. One probably would be a misdemeanor, and the other a felony. Is that it? A. I don't know that I draw the lines as you do.

Q. You don't know what my views are on that subject, do you? A. No, sir; I do not.

Q. What I want to get at is if you make any distinction between a man who offers a place to another for an act, or a man who demanded a place from another—if those two are not on the same basis? A. It is about the same.

Q. You don't think it would be improper in either event—not legally wrong. A. I claim this: Where a man asks me to betray my party for the purpose of patronage, is a greater crime than a man who agrees to support another for a certain place. I think it would be a greater wrong to ask me to betray my party for United States Senator—

Q. (Interrupting.) Well, as I understood the outset of this interview that you had intended to leave the impression upon the committee that Mr. Moffitt had made an improper proposal to you? A. I simply came here to make a statement that these inducements had been offered to me, to show that they know and don't claim that my pledge was absolute, or they wouldn't be offering me anything.

Q. That is the reason? A. Yes, sir; we know that Moffitt talks a great deal.

MR. CATOR: I understand you don't make any accusation against Mr. Moffitt? A. No, sir.

Q. Has any Democrat in Alameda County made any absolute claim on you that you should vote for Stephen M. White on the first ballot—have any of them claimed that? A. No, sir.

Q. Isn't the utmost they ever claimed is that some time you would come over and vote for the Democratic candidate?

MR. SHANAHAN: Did you ever at any time offer to vote for the Democratic United States Senator in case you would get the Postmastership? A. No, sir.

Q. Did you ever discuss it with a man named Stoddard? A. No, sir; Mr. Stoddard came to me and I said to Mr. Stoddard on that subject, "The idea of such a thing never entered my mind, until I saw it in the paper, for I wouldn't have it, and no man will come here and testify to that differently, unless he is a perfect villain."

TESTIMONY OF E. D. COOK.

Sworn.

MR. SHANAHAN: Where do you reside? A. Santa Ana, Orange County.

Q. How long? A. About five years.

Q. Do you know Mr. T. J. Kerns? A. I have made his acquaintance since I came to Sacramento.

Q. Did you meet him on the 18th day of January, 1893, on the day of the election of United States Senator? A. Yes, sir.

Q. Under what circumstances, and where? A. Sitting in the seat alongside of him.

Q. With Mr. Kerns? A. Yes, sir.

Q. Was there anything that came up in relation to the introduction of bills or consideration of any measures to engage your attention at that time or not? A. Yes, sir.

Q. State the fact. A. Mr. Kerns, some time previous, had thought of introducing a bill in the Legislature in relation to the Superior Judges of Los Angeles County, and asked my views about it. I suggested that he write to Mr. Dillon, as he was likely the best informed upon the subject—he was District Attorney of Los Angeles County, and I suggested a series of questions for him to ask Mr. Dillon. He asked such questions as I suggested, and that morning received a reply to them—a letter, and asked me to look at them, and I looked at the answers, and from the answers I saw that Mr. Dillon was not in favor of the bill, and Mr. Kerns thought that he had better go and see Mr. Mathews about it, as Mr. Mathews —

Q. (Interrupting.) What Mathews? A. Senator Mathews, from Los Angeles County, and took the bill and went out for that purpose, so far as I know of it.

Q. Did he take the bills with him? A. I think he did.

Q. About what time of day was that—was it anywhere near the time of balloting for United States Senator? A. It must have been about an hour previous to that.

Q. He left his seat, then, for that particular and avowed purpose? A. So far as I know.

Q. Did he state that he was going for that purpose? A. Yes, sir; he did.

MR. CATOR: You have no recollection of seeing Cannon come up and speak to him? A. No, sir.

Q. You don't remember that? A. I do not. I sat in the seat alongside of Mr. Kerns all the forenoon, and during the balloting.

Q. And yet you didn't see Mr. Cannon? A. No, sir.

Q. Nor hear any conversation? A. No, sir; I didn't hear any.

Q. Cannon testified that this conversation was loud enough that any one could hear it. A. I remember that he testified to that.

MR. CATOR: That is all.

MR. KERNS: I would like to ask Mr. Cook if I didn't ask him if I had not better submit that letter to Stephen M. White? A. You did say so, so far as I can remember.

Q. Did you hear me ask Mr. Montgomery, who was standing near there, if Mr. Stephen M. White was in the Chamber anywhere? A. I did not.

MR. SHANAHAN: Mr. Cator, have you any witnesses?

MR. CATOR: No, sir.

MR. SHANAHAN: Is there any person present who desires to have any witness present to ask any questions in regard to this matter? If there is, he can do so, whether a member of the committee or not. If not, I presume we will close the investigation.

REPORT OF COMMITTEE.

Mr. Speaker and Gentlemen of the Assembly:

Your committee to whom was referred for consideration and investigation the following resolution, to wit:

Resolved, That a select committee of seven be appointed by the Speaker of the Assembly to fully investigate the charge and words used by Assemblyman Bretz in the Joint Assembly for the election of United States Senator, on January 18, 1893, wherein Mr. Bretz used the words in said Joint Assembly as follows, to wit: "We believe that this change was brought about by the corrupt use of money, and we believe that Marion Cannon is the negotiator."

And that said committee is fully empowered to investigate said charge, to send for persons and papers, and is required to report to the Assembly the result of its investigation.

Beg leave to report as follows:

That they have taken and given ample time in the matter of said investigation to any and all persons who desired to be heard therein, either as to facts or arguments.

That Thomas V. Cator appeared as Counsel for Assemblyman Bretz, and no one appeared as counsel for any other person.

From such consideration and investigation we find:

That the charge made by Assemblyman Aaron Bretz, as set forth in said resolution, and which was made in the Joint Assembly for the election of United States Senator, in the Assembly Chamber, on January 18, 1893, was false and untrue in every respect.

That the charge so made was groundless and malicious, inasmuch as from the evidence we find no probable cause for the utterance of the words used in said Joint Assembly by the said Aaron Bretz as aforesaid.

We find that there was not the slightest evidence adduced before said committee that money or any corrupt means whatsoever, or that any means other than those the most honorable, were used to procure the election of Stephen M. White as United States Senator.

We find that not the slightest taint of corruption, or wrongdoing in any respect, attaches to either Hon. Marion Cannon or Hon. T. J. Kerns in the matter of said election of said United States Senator.

Wherefore, in view of said facts, and in view of the circumstances surrounding the making of said charge, your committee respectfully recommends that said Assemblyman Aaron Bretz should receive the severest censure of the Assembly, and that he should be expelled therefrom, and his seat declared vacant.

T. W. H. SHANAHAN,
Chairman.

W. H. ALFORD.
D. T. PERKINS.
JULIUS KAHN.
E. A. PUESCHEL.
W. P. MATHEWS.

I concur in the report, except as to that part which recommends expulsion.

W. A. VANN.